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S. HRG. 100-1047

THE FEDERAL DEBT COLLECTION PROCEDURES ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS AND ADMINISTRATIVE PRACTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1961

A BILL TO AMEND TITLE 28, UNITED STATES CODE, TO PROVIDE FEDERAL DEBT COLLECTION PROCEDURES

APRIL 15, 1988

Serial No. J-100-61

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
95-926 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S521-34

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THE FEDERAL DEBT COLLECTION PROCEDURES ACT OF 1988

FRIDAY, APRIL 15, 1988

U.S. SENATE,
SUBCOMMITTEE ON COURTS AND
ADMINISTRATIVE PRACTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Howell Heflin (chairman of the subcommittee) presiding.

Also present: Senators Grassley and Thurmond.

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. The hearing will come to order.

This is the hearing on the Federal Debt Collection Procedures Act of 1988, S. 1961. I am very pleased to conduct these hearings. I would like to take this opportunity to welcome all of today's witnesses and thank you for what I know will be excellent testimony.

This bill is an attempt to amend the procedures by which the Federal Government collects delinquent Federal debts—a growing national problem. Estimates have indicated that the amount of delinquent Federal debt is over $80 billion.

These debts range from delinquent Federal income taxes to criminal and civil fines.

The General Accounting Office has reported that one of the main reasons that the Justice Department has not been more successful in debt collection is that the Department must follow State law when trying to collect debts owed to the Federal Government. As one can imagine, these State laws vary a great deal throughout the Nation and retard Federal debt collection efforts.

This bill would institute a uniform, nationwide system of Federal debt collection procedures. This legislation would provide various Government agencies and departments with the use of such tools as attachments, garnishments, judgment liens and sales, confessed judgments, and restraining orders to better collect delinquent debts. The bill also proposes that 5 percent of the moneys collected by the Justice Department and U.S. attorneys be placed in a fund for collection-related expenses.

I have always been a strong advocate of States rights. I believe we should closely examine the impact that this legislation would have on States.

I believe that it is important to note that this bill was drafted by U.S. attorneys around the country who have experienced the problems and difficulties the Government faces in attempting to collect delinquent debts. I would like to congratulate the U.S. attorneys who have dedicated so many hours in formulating this legislation.

Finally, in this time of enormous budget deficits, we must pursue all avenues for collecting moneys owed to the U.S. Government. I am determined to do what I can to see that the Federal Government has all the necessary and appropriate tools to collect debts owed to the American people.

Senator Thurmond, do you have an opening statement?

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Chairman, I would like to commend you for holding this hearing to consider S. 1961, the Federal Debt Collection Procedures Act of 1988. On December 8, 1987, Chairman Biden, Senator Grassley, and I introduced this important legislation which would amend Federal law by enhancing the remedies available to the United States for collection of debt owed to the Federal Government. This much-needed measure will provide for uniform collection procedures that apply nationwide.

This bill was conceived, drafted, and is strongly supported by U.S. attorneys who are well aware of the procedures that are necessary to assure that those who owe money to the U.S. Government pay it back.

The Federal Debt Collection Procedures Act of 1988 was introduced in order to improve the manner in which the Department of Justice handles the process of litigation and other reasonable collection efforts necessary to recover moneys owed to the United States. Incredibly, it has been estimated by the General Accounting Office that the Federal Government has approximately $32 billion of nontax delinquent debt.

I want to repeat that: $32 billion of nontax delinquent debt.

Mr. Chairman, currently the debts owed to the United States must be collected under the State law in which a debtor is found. These laws vary greatly from State to State, making enforcement of debt collection extremely difficult. For example, in some States, a debtor can exempt vast amounts of property from execution; whereas, a similarly situated debtor in another State is granted no such exemption at all.

It is unfair that Federal debtors who reside in States with strong collection laws are made to pay their Federal debts, while others use weak collection laws in States that help debtors to escape repayment of their debt to the Federal Government.

This legislation aims to correct the inequities that exist under the current system. This measure creates a firm but fair comprehensive statutory scheme for the collection of Federal debt. This bill maintains State law, leaving State remedies unaffected. This law is meant to be used by Federal litigators in Federal courts to collect debts owed to the Federal Government.

The Department of Justice anticipates that the cost of implementing this proposal will be more than offset by the increased collections of money owed to the United States.

In summary, this bill represents a collaborative effort of 94 U.S. attorneys across this country who perform the vast majority of debt collection litigation on behalf of the United States. Such legislation reflects their broad legal expertise and practical experience. We must not ignore their collective wisdom.

Finally, we should correct inequities in the Federal collection mechanism. A Federal procedural collection statute will allow for the creation of standard forms, policies, and procedures for the handling of Federal debt litigation and enforcement. Those who owe the Federal Government must not be allowed to ignore their financial responsibility because of ineffective collection procedures.

Mr. Chairman, this legislation is most important. I look forward to its examination by the Judiciary Committee and its ultimate enactment into law. I strongly urge my colleagues to support this legislation.

I want to thank you, Mr. Chairman. I have another appointment at 10:30. I will have to leave, but I want you to know I am very interested in this matter. And I will be briefed on this testimony.

Glad to have you gentlemen with us.

[The text of S. 1961 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1961

To amend title 28, United States Code, to provide Federal debt collection procedures.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8 (legislative day, DECEMBER 15), 1987

Mr. BIDEN (for himself, Mr. THURMOND, and Mr. GRASSLEY) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 28, United States Code, to provide Federal debt collection procedures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Debt Collection Procedures Act of 1988".

TITLE I—FEDERAL DEBT COLLECTION PROCEDURES ACT

SEC. 101. Title 28 of the United States Code is amended by inserting immediately after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"Subchapter
"A. Definitions and General Provisions 3001
"B. Prejudgment Remedies 3101
"C. Judgments; Liens 3201
"D. Postjudgment Remedies 3301
"E. Exempt Property 3401
"F. Fraudulent Transfers 3501
"G. Partition 3601
"H. Foreclosure of Security Interests 3701

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"Sec.
"3001. Definitions.
"3002. Rules of construction.
"3003. Nationwide enforcement.
"3004. Priority of claims of the United States.
"3005. Claims of United States not barred by State statute of limitations.
"3006. Right of set-off or recoupment.
"3007. Discovery.
"3008. Affidavit requirements.
"3009. Perishable property.
"3010. Immunity.
"3011. Proceedings before United States magistrates.
"3012. United States marshals' authority to designate keeper.
"3013. Co-owned property.
"3014. Assessment of charges on a claim.
"3015. Funding.
"3016. Effective date.

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"§ 3001. Definitions

"As used in this chapter—

"(a) 'claim' means amounts owing on account of direct loans or loans insured or guaranteed by the United States and all other amounts due the United States from or on account of fees, duties, leases, rents, services, sales of real or personal property, overpayments, fines, assessments, penalties, restitution, damages, interest, taxes, bail bond forfeit-

ures, reimbursements and recovery of costs incurred and other sources of indebtedness. This definition includes amounts due the United States for the benefit of an Indian tribe or individual Indian.

"(b) 'Counsel for the United States' shall include for the purposes of this chapter, a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, an attorney with the United States Department of Justice or other Federal agency having litigation authority and any private attorney authorized by contract to conduct litigation for collection of debts on behalf of the United States.

"(c) 'Court' means any court created by the Congress of the United States exclusive of the United States Tax Court.

"(d) 'Debt' means liability to the United States on a claim.

"(e) 'Debtor' means a person who is liable to the United States on a claim.

"(f) 'Debt collection personnel' means personnel employed by any agency of the Federal government whose primary duties are the collection of the debts owed to the United States.

"(g) 'Disposable earnings' means that part of the earnings remaining after all deductions required by law have been withheld.

"(h) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(i) 'Garnishee' means a person other than the debtor who has, or is thought to have, possession, custody or control of any property of the debtor, including obligations owed to the debtor whether such obligations are past due or have yet to become due, against whom a garnishment has been issued by the clerk of the court.

"(j) 'Judgment' means a judgment, order or decree entered in favor of the United States in any court whether arising from a civil or criminal proceeding regarding a claim.

"(k) 'Judgement creditor' means the United States whenever referred to in this chapter.

"(l) 'Judgment debtor' means a person against whom the United States holds a judgment on a debt.

"(m) 'Person' includes a natural person, including individual Indians, a corporation, a partnership, an un-

incorporated association, a trust or an estate or other entity, public or private, including local governments and Indian tribes.

"(n) 'Prejudgment remedy' means the remedies of attachment, garnishment, replevin, receivership, sequestration, injunction or a combination of any of the foregoing that are sought prior to judgment.

"(o) 'Property' includes any present or future interest in real, personal (including, but not limited to, earnings, goods and choses in action), or mixed property, whether legal or equitable, tangible or intangible, vested or contingent, and wherever located and however held, whether held as a tenancy in common, joint tenancy, tenancy by the entirety, community property, in partnership, or in trust (including spendthrift and pension trusts), and excludes any property held in trust by the United States for the benefit of any Indian tribe or individual Indian or any Indian lands subject to restrictions against alienation imposed by the United States.

"(p) 'Service' under the provisions of this chapter shall be in accordance with the Federal Rules of Civil Procedure.

"(q) 'State' includes the several states, the District of Columbia, the Commonwealths of Puerto Rico

and the Northern Marianas and any of the territories and possessions of the United States.

"(r) 'United States' includes an officer or agency thereof, a Federal corporation, Federal instrumentality, department, commission, board or other Federal entity.

"(s) 'United States marshal' means the United States marshal, his designee or contractor.

"§ 3002. Rules of construction

"In this title—

"(a) 'includes' and 'including' are not limiting;

"(b) 'or' is not exclusive;

"(c) the singular includes the plural;

"(d) the provisions are general and intended as a unified coverage of the subject matter;

"(e) if any provision or amendment made by this chapter or application thereof to any person is held invalid, the provisions of every other part and their application shall not be affected thereby;

"(f) no part shall be deemed impliedly repealed by subsequent legislation if such a construction can reasonably be avoided;

"(g) the cases arising under the provisions herein shall not affect cases arising under admiralty jurisdiction;

"(h) The provisions of this chapter do not and should not be construed to curtail or limit any rights the United States has to collect taxes under any other provision of Federal law.

"(i) The provisions of this chapter do not, and should not be construed to, curtail or limit any rights the United States has under any other provision of Federal law to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case.

"(j) With respect to tax judgments and criminal judgments (assessments, fines, forfeitures, and restitution) only, the United States may use any remedies available under the applicable state law if that remedy is not similar to any in this chapter.

"(k) The provisions of this chapter do not, and should not be construed to, curtail or limit the rights the United States has under any other provision of Federal law to appoint receivers.

"§ 3003. Nationwide enforcement

"Any writ, order or other process obtained hereunder may be enforced by the court issuing the writ in any state, regardless of where the person is served with the writ, order or process.

"§ 3004. Priority of claims of the United States

"The priorities established by the various provisions of this chapter shall be superseded by the provisions of section 3713 of title 31, United States Code, when the debtor or, if deceased, his estate is insolvent as determined under that section and the priority of the United States shall be in accordance therewith.

"§ 3005. Claims of the United States not barred by State statute of limitations

"The United States shall not be barred by the statute of limitations of any State in the enforcement of any of its claims.

"§ 3006. Right of set-off or recoupment

"Except as specifically provided for in this chapter, nothing in this chapter shall be construed to affect the common law or statutory rights to set-off or recoupment.

"§ 3007. Discovery

"(a) The United States may have discovery from any person including the debtor regarding the financial condition of the debtor in any case in which the United States seeks to enforce a claim. Such discovery may be before judgment or after judgment is entered in the case and in the manner in which discovery is provided for in the Federal Rules Civil Procedure.

"(b) After judgment, the United States may also subpoena the judgment debtor or a third party to appear before

the court with all records, books and other documents and to answer under oath questions regarding the debtor's financial condition and ability to satisfy the judgment.

"(c) The court shall impose appropriate sanctions as provided by the Federal Rules of Civil Procedure or the court's contempt power, including arrest of the offending person or debtor, for failure to comply with these discovery procedures.

"§ 3008. Affidavit requirements

"Any affidavit required of the United States by this chapter may be made upon information and belief establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

"§ 3009. Perishable property

"At any time during any proceedings, other than those under section 3103(a), the court may determine on its own initiative or upon motion of any party, that any seized or detained property, or any portion thereof, is likely to perish, waste, or be destroyed, or otherwise depreciate in value during the pendency of the proceedings. The court shall order the sale of the property or portion thereof and require the proceeds to be deposited with the clerk of the court. For purposes of liability on the part of the United States, the price paid at any such sale shall be conclusively presumed to be the fair market value.

"§ 3010. Immunity

"Counsel for the United States, but excluding any private attorneys authorized by contract to conduct litigation for collection of debts on behalf of the United States, and non-attorney debt collection personnel shall have absolute immunity in their individual and official capacities from any liability arising from errors, omissions or negligence in performance of their official debt collection duties.

"§ 3011. Proceedings before United States magistrates

"A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States. A district court may adopt appropriate rules to carry out any such assignment.

"§ 3012. United States marshals' authority to designate keeper

"Whenever the United States marshal is authorized to seize property pursuant to the provisions of this chapter, the United States marshal shall be authorized to designate another person or Federal agency to hold for safekeeping such property seized.

"§ 3013. Co-owned property

"The remedies available to the United States under this chapter shall be enforced against property which is co-owned by a debtor and others to the extent allowed by the law of the state where the property is located. Specific references to

co-owned property in the provisions regarding execution and garnishment shall not restrict the application of other remedies to co-owned property in the manner stated above.

"For the purposes of this section, 'property' does not include the rights or interest of an individual other than the debtor in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof. A 'retirement system for Federal military or civilian personnel' means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or regulation pursuant to statutory authority.

"§ 3014. Assessment of charges on a claim

"The United States may assess on a claim a charge to cover the cost of processing and handling the litigation and judicial enforcement of the claim.

"§ 3015. Funding

"It is hereby authorized that such sums be appropriated as may be necessary to carry out the provisions of this chapter. Appropriations authorized under this section shall remain available for obligations necessary to implement this chapter for one year.

"§ 3016. Effective date

"This Act and the amendments made by this Act shall take effect one hundred and eighty days after the date of

enactment and shall apply to all claims and debts owed to the United States and judgments in favor of the United States.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"Sec.
"3101. Prejudgment remedies with prior notice.
"3102. Prejudgment remedies without prior notice.
"3103. Attachment.
"3104. Garnishment.
"3105. Injunctions.
"3106. Sequestration.
"3107. Replevin.
"3108. Receivership.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"§ 3101. Prejudgment remedies with prior notice

"(a) APPLICATION.—(1) The United States may in conjunction with the civil filing or at any time after the filing of a civil action, make application, under oath, to the court to issue any prejudgment remedy allowed by law.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall state that the party against whom any prejudgment remedy is sought shall be afforded an opportunity for a hearing.

"(b) GROUNDS.—Any prejudgment remedy may be issued in favor of the United States by any court of the United States on application before judgment when—

"(1) the application sets forth with particularity, that all statutory requirements for the issuance of such

prejudgment remedy sought under this chapter have been complied with by the United States; and

"(2) the application sets forth the probable validity of the claim of the United States.

"(c) NOTICE; FORM OF NOTICE.—Upon the filing of an application, the clerk of the court shall issue a notice directed to any person against whom any prejudgment remedy would operate, substantially in the following form—

"NOTICE

"You are hereby notified that your [property] may be taken away from you by the United States, which says that you owe the United States a debt of $[amount]. The United States wants to take your property so that it can be sure you will pay if the court decides that you owe this money.

"If you do not want to have your property taken away, you may ask for a hearing before this court. You may ask for the hearing anytime within seven days from the date that this notice was mailed as indicated below by the clerk. The hearing will take place within five working days after you notify the court. You may ask for the hearing by checking the box at the bottom of this notice and filing it with the court at the following address: [address of court]. You must also send a copy to counsel for the United States at [address], so that the United States knows that you want the hearing.

"At the hearing, the court will decide whether the claim against you is probably valid and whether other legal requirements have been met. In addition, there are certain exemptions under Federal law which you may be entitled to claim with respect to the property.

"If you do not check the box requesting a date for a hearing and take this notice to the court within seven days, the court will automatically assume you do not want a hearing and you will lose your right to a hearing and the United States may take your property with the court's permission.

"If you have any questions concerning your rights or this procedure, you should consult an attorney.

"DATE OF MAILING: _____

"(d) SERVICE OF NOTICE AND APPLICATION.—(1) A copy of the notice and a copy of the application for issuance of any prejudgment remedy shall be served by counsel for the United States by first class mail on each party against whom any remedy is sought. If such service is not possible, then service may be made under Rule 4 of the Federal Rules of Civil Procedure, as appropriate.

"(2) Proof of service by mail may be made by affidavit or certification of mailing.

"(e) TIME TO REQUEST HEARING DATE; FORM OF REQUEST.—(1) Each person served with a copy of the notice set forth above and the application for any prejudgment remedy may request a date be set for the hearing on such application by filing with the clerk of the court within seven working days after service of the notice a written request for hearing date. The request for hearing shall be made by using the form provided or in some other writing. A copy of the request for hearing date shall be mailed by the person requesting the hearing to counsel for the United States.

"(2) The clerk of the court shall apprise counsel for the United States and the person requesting the hearing of the date of hearing.

"(f) WAIVER OF HEARING.—(1) If no request for hearing date is filed within the required time, counsel for the United States shall file an affidavit of default setting forth that service was made, that no request for hearing date was filed and that the party against whom any prejudgment remedy is sought has apparently waived any hearing. Counsel for the United States shall also file a proposed form of the written order requested. Upon filing of such affidavit, the clerk shall enter the order of waiver of record and any party so defaulted loses his right to a hearing prior to the issuance of the prejudgment remedy sought.

"(2) Upon entry of the order of waiver, the clerk shall immediately deliver the court file to the judge to whom the matter is assigned.

"(g) JUDICIAL REVIEW APPLICATION; ISSUANCE OF PREJUDGMENT REMEDIES WITH NOTICE.—(1) The court shall, within five days after hearing or the entry of the order of waiver, review and examine all pleadings, evidence, affidavits and documents filed in the action to determine the following—

"(A) that evidence of service has been filed together with the original of the application and copy of notice;

"(B) where an order of waiver has been entered, that the affidavit of default has been filed and the order entered by the clerk;

"(C) that the claim or claims of the United States are based on facts established by the evidence or stated in the affidavit are sufficient to show that such claim or claims are probably valid; and

"(D) that any statutory requirement of this chapter for the issuance of any prejudgment remedy has been shown.

"(2) Upon the court's determination that the requirements of subsection (g)(1) have been met, the court shall

issue all process sufficient to put into effect the prejudgment remedy sought.

§ 3102. Prejudgment remedies without prior notice

"(a) GROUNDS.—Any prejudgment remedy may be issued by any court without prior notice to the person against whom it will operate when the United States has a reasonable basis to believe that—

"(1) the person against whom the prejudgment remedy is sought is about the to leave the jurisdiction of the court and has refused to secure that debt, or is a fugitive from justice;

"(2) such person has secreted or is about to secrete property;

"(3) such person has assigned or disposed of property, wholly or in part, or that such person is about to assign or dispose of property;

"(4) the United States is the owner, lessor or otherwise is lawfully entitled to the possession of the property claimed and is seeking a prejudgment remedy in the nature of replevin, receivership or sequestration;

"(5) a prejudgment remedy is required to obtain jurisdiction;

"(6) a constructive or resulting trust should be impressed on the property in favor of the United States;

"(7) the person against whom the prejudgment remedy is sought is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or evidence of debt in a manner prejudicial to creditors;

"(8) the person against whom the prejudgment remedy is sought has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the court; or

"(9) the debt is due for property obtained illegally or by fraud.

"(b) APPLICATION; AFFIDAVIT; BOND; ISSUANCE OF WRIT.—(1) Contemporaneously with or at any time after the filing of a civil action, the United States may file an application supported by an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim and the right of the United States to recover what is demanded in the application. The application shall state the amount of the debt owed the United States, including principal, interest, and costs, if any, and one or more of the grounds set forth in section 3120(a) and the specific requirements of the specific remedy sought.

"(2) No bond is required of the United States.

"(3) Upon the court's determination that the requirements of subsection (b)(1) have been met, the court shall issue

all process sufficient to put into effect the prejudgment remedy sought.

"(c) NOTICE AND HEARING; WAIVER OF HEARING.—(1) Upon filing of an application as provided in this section, the clerk shall issue notice in substantially the following form to the counsel for the United States for service upon the party against whom any prejudgment remedy is sought in accordance with subsection (3) of this section—

"NOTICE

"You are hereby notified that your [property] is being taken away from you by the United States, who says that you owe it a debt of $[amount]. The United States is taking your property because it says

[Insert one or more of the specific grounds set forth in section 3102(a).]

"In addition, you are hereby notified that there are certain exemptions under Federal law which you may be entitled to claim with respect to your property.

"If you disagree and think you do not owe the United States, or that you have not done what is stated above, then you can ask this court to hear your side of the story and give your property back to you. If you want such a hearing, it will be given to you within five working days after you notify the court that you want one. To do so, check the box at the bottom of this notice or prepare your request in writing and mail it or take it to the clerk of the court at the following address: [address]. You must also send a copy to counsel for the United States at [address], so that the United States will know you want a hearing.

"If you do not request a hearing within thirty days from [date of issue] you will not be given a hearing regarding why the United States should or should not be allowed to take your property.

"You should consult a lawyer if you have any questions about your rights about this procedure.

"(2) When a prejudgment remedy is issued under this section, the person against whom it is sought may immediately move to quash such order and the court shall hear such motion within five days from the date the request was filed. The issues at such hearing shall be limited to—

"(A) the probable validity of the claim or claims of the United States and any defenses and claims of exemptions of the party against whom such prejudgment remedy will operate; and

"(B) the existence of any statutory requirement for the issuance of any prejudgment remedy sought, plus the existence of any ground set forth in section 3102(a) of this chapter.

"(3) Counsel for the United States shall, at the time of the seizure, attachment or garnishment, or within three days thereafter, exercise reasonable diligence to serve the person against whom a prejudgment remedy is sought with an application, order and prescribed notice of the seizure, impoundment or such other act ordered by the court and of said person's right to an immediate hearing contesting the same.

"(4) If no request for a hearing is filed with the clerk within thirty days after the notice of seizure is issued by the clerk, a hearing shall be waived.

"§ 3103. Attachment

"(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) GENERALLY.—All property of the defendant, except earnings and property exempt under the provisions of this chapter, may be attached pursuant to a writ of attachment in any action in which a debt or damages are recoverable and may be held as security to satisfy such judgment and costs as the United States may recover.

"(2) The amount to be secured by an attachment shall be determined as follows—

"(A) the amount of the debt owed to the United States by the defendant; and

"(B) the estimated amount of interest and costs likely to be taxed by the court.

"(3) LIMITATION ON AMOUNT.—In any action or suit for an amount which is liquidated or ascertainable by calculation, no attachment shall be made for a larger sum than the amount of the debt and such additional amount as is reasonably necessary to provide for interest thereon and costs likely to be taxed in the action.

"(b) AVAILABILITY OF ATTACHMENT.—The United States after complying with, or in addition to the provisions of section 3101 or 3102 may, in the following cases, have the property of the defendant attached as security for satisfaction of any judgment which may be recovered by the United States—

"(1) in an action upon a contract, express or implied, for payment of money which is not fully secured by real or personal property, or, if originally so secured, the value of such security may, without any act of the United States or the person to whom the security was given, be substantially diminished below the amount of the debt;

"(2) when an action is pending for damages in tort and the defendant is about to dispose of or remove his property beyond the jurisdiction of the court;

"(3) in an action for damages or upon contract, express or implied, against a defendant not residing within the jurisdiction of the court; or

"(4) in an action to recover fines, penalties, or taxes.

"(c) ISSUANCE OF WRIT; CONTENTS.—(1) A writ of attachment shall be issued by the court directing the United States marshal of the district where the property is located to attach so much of the defendant's property as will be sufficient or is available to satisfy the debt of the United States.

"(2) Several writs of attachment may, at the option of the United States, be issued at the same time, or in succession, and sent to different districts until sufficient property is attached to satisfy the debt.

"(3) The writ of attachment shall contain—

"(A) the date of the issuance of the writ;

"(B) the court title and the docket number and name of the cause of action;

"(C) the name and last known address of the defendant;

"(D) the amount to be secured by the attachment; and

"(E) a reasonable description of the property to the extent available.

"(d) LEVY OF ATTACHMENT.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the defendant found within his district, unless otherwise directed by counsel for the United States.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the defendant.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the defendant in the same manner that a summons is served in a civil action and make his return thereof. If the United States marshal is unable to serve the writ upon the defendant, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and notice of levy on it or in a

conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the defendant in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of attachment shall return the writ with his action endorsed thereon or attached thereto and signed by him, to the court from which it was issued within thirty days after the date of the levy.

"(2) The return shall describe the property attached with sufficient certainty to identify it, state the location where it was attached, when it was attached and the disposition made of the property. If no property was attached, the return shall so state.

"(3) When personal property has been replevied as authorized by section 3103(j), the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

"(4) When the property levied on is claimed, replevied or sold after the return, the United States marshal shall im-

mediately make a further return to the clerk of the court showing the disposition of the property.

"(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment creates a lien on the property in favor of the United States.

"(2) The levy of the writ of attachment upon any property of defendant subject thereto is a lien from the date of the levy on the real property and on such personal property as remains in the custody of the attaching United States marshal and on the proceeds of such personal property as is sold.

"(3) The lien in favor of the United States marshal shall be ranked ahead of any other security interests perfected after the time of levy.

"(4) The lien shall arise from the time of levy and continue until a judgment in the case is obtained or denied, or the action is otherwise dismissed. The death of the defendant whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

"(5) Upon entry of judgment for the United States, the court shall order the proceeds of the personal property, if any has been sold, to be applied to the satisfaction of the judgment, and also order the sale of any remaining personal prop-

erty and the sale of any real property levied on to satisfy the judgment.

"(g) ATTACHMENT OF PERISHABLE PROPERTY; SALE; PROCEDURE.—(1) When personal property that has been attached is not replevied, the court may order it to be sold when it appears that the property is in danger of serious and immediate waste or decay, or that keeping it until trial will result in such expense or deterioration in value as substantially will lessen the amount likely to be realized therefrom.

"(2) In ascertaining whether the property is in danger of serious and immediate waste or decay or that keeping of the property until trial will result in such expense or deterioration in value as will substantially lessen the amount likely to be realized therefrom, the court may require or dispense with notice to the parties and may act upon such information provided by affidavit, certificate of the United States marshal or other proof, as appears sufficient to protect the interest of the parties.

"(h) DISPOSITION OF PROCEEDS OF SALE OF PERISHABLE PROPERTY; REPORT OF SALE.—Within five days after sale, the proceeds of the sale as provided in subsection 3103(g) after deduction of the United States marshal's expenses therefrom shall be paid by the United States marshal making the sale to the clerk of the court. The proceeds shall be accompanied by a statement in writing and signed by the

United States marshal, to be filed in the action, stating the time and place of sale, the name of the purchaser and the amount received with an itemized account of expenses.

"(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed or sold, the court may make such order for its preservation or use as appears to be to the interest of the parties.

"(j) REPLEVIN OF ATTACHED PROPERTY BY DEFENDANT; BOND.—At any time before judgment, if the property has not previously been sold, defendant may replevy the property or any part thereof by giving a bond approved by counsel for the United States and payable to the United States in double the amount of the debt.

"(k) JUDGMENT WHERE PERSONAL PROPERTY REPLEVIED.—When personal property under attachment has been replevied, the judgment which may be entered shall be against defendant and also against the sureties on his replevin bond for the amount of the judgment, interest and costs.

"(l) RESTORATION OF PROPERTY OR EXONERATION OF BOND; LEVY ON EXEMPT PROPERTY.—(1) If the attachment is vacated or if the judgment is for defendant, the court shall order the property or proceeds thereof restored to defendant or exonerate the replevin bond. The court may deter-

mine under what circumstances the defendant is entitled to receive the proceeds rather than the attached property.

"(2) When any property claimed to be exempt is levied upon, defendant may, at any time after such levy, apply to the court for vacation of such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to defendant.

"(m) REDUCTION OR DISCHARGE OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the defendant or person whose property has been attached may submit a written motion to the court which issued the writ for a reduction of the amount of the attachment or its discharged. Notice of such motion shall be served upon the United States in accordance with the Federal Rules of Civil Procedure. The defendant's sole remedy for excessive attachment shall be by motion for reduction or dissolution of attachment.

"(2) The court shall order a part of the property to be released, if upon hearing the court finds that the amount of the attachment is excessive or unreasonable where the attachment is for a sum larger than the liquidated or ascertainable amount of the debt plus an amount necessary to include interest and costs likely to be taxed.

"(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

"§ 3104. Garnishment

"(a) All prejudgment garnishments shall meet the requirements of sections 3101 and 3102.

"(b) All prejudgment garnishments as authorized by the court hereunder shall be issued and answered in the same manner and to the same extent as set forth in section 3306 with the following exceptions—

"(1) The writ shall specify the date that the order authorizing prejudgment garnishment was entered.

"(2) The writ shall specify the amount claimed by the United States.

"§ 3105. Injunctions

"Whether or not there are other remedies available to the United States under this chapter, nothing in this chapter shall be construed to preclude or otherwise limit the United States from obtaining injunctive relief under the Federal Rules of Civil Procedure in actions for debts owed the United States.

"§ 3106. Sequestration

"(a) APPLICATION FOR WRIT OF SEQUESTRATION AND ORDER.—If the United States claims in its complaint the right to title or possession of property or seeks to enforce

a lien or security interest in such property, the United States may file an affidavit showing—

"(1) a description of the property sufficient to identify it;

"(2) the approximate value of the property;

"(3) the location of the real property, or in the case of personal property, the last known and likely locations of the property;

"(4) the availability of sequestration.

"(b) AVAILABILITY OF SEQUESTRATION.—The United States after complying with, or in addition to, the provisions of sections 3101 or 3102 may have property sequestered—

"(1) upon a showing that there exists a reasonable probability of an immediate danger that the debtor or other defendant or the party in possession of such property will ill treat, waste, destroy or convert to his own use the property, which includes, but is not limited to, crops, timber, rents, perishable goods, livestock or the revenues therefrom; or

"(2) upon a showing that title to or possession of such property has been secured by the debtor or other defendant or the party in possession by surreptitious means, trick, scheme, fraud, force, violence, claim of adverse possession or such other claims or any means

adverse to the claim in title or possession, or both, of the United States.

"(c) ISSUANCE OF WRIT.—A writ of sequestration shall be issued by the court directing the debtor or other defendant or party in possession to sequester the property and deliver it to the United States.

"(d) Unless inconsistent, the provisions governing section 3103(g) through (1) shall be applicable to this section.

"(e) These writs shall be served in accordance with the Federal Rules of Civil Procedure.

"§ 3107. Replevin

"(a) APPLICATION FOR WRIT.—If the United States claims in its complaint the right to possession of specific personal property, the United States may, at any time after complying with, or in addition to, the provisions of sections 3101 or 3102, file an affidavit showing—

"(1) that the United States is the owner of the property claimed, or is lawfully entitled to its possession;

"(2) a description of the property;

"(3) that the property is wrongfully detained by the defendant;

"(4) the approximate value of the property.

"(b) SEIZURE.—If the court determines the United States has met the above requirements, it shall order that the

United States marshal take possession of the specified property and deliver it to the United States.

"(c) REDELIVERY OF POSSESSION TO DEFENDANT.—The defendant may obtain redelivery of the property or any part thereof by giving bond as set forth in section 3103(j)

"§ 3108. Receivership

"(a) APPOINTMENT OF A RECEIVER.—The United States may apply for the appointment of a receiver for property in which it has an interest and which is or is to be the subject of an action in court. The application may be filed at anytime prior to judgment or during the pendency of an appeal if there is a danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, mismanaged or the United States has otherwise established grounds for such relief under section 3101(a) or 3102(a). However, a receiver shall be appointed without notice or without regard to adequacy of security when a security agreement grants the right to the appointment of a receiver to the United States. An application made by the United States when it is not already a party to the action constitutes an appearance in the action and the United States shall be joined as a party.

"(b) POWERS OF RECEIVER; EMPLOYMENT OF COUNSEL.—The court appointing a receiver may authorize him to take possession of real and personal property and sue for,

collect and sell obligations upon such conditions and for such purposes as the court shall direct and to administer, collect, improve, lease, repair or sell such real and personal property, as the court shall direct. A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property. Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers or other professional persons. Upon motion of the receiver or a party, powers granted to a receiver may be expanded or limited. A receiver appointed under the terms of a security agreement shall be entitled to recover the rents and profits of the property covered by the security agreement as additional security and to pay them over to the United States in payment of any amount due arising from a default by the debtor.

"(c) UNITED STATES AS SECURED PARTY.—A covenant that the United States as the holder of the security interest in any action to foreclose it shall be entitled to the appointment of a receiver must be construed as meaning that the United States in any action to foreclose the security interest shall be entitled, without notice and without regard to adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of the premises covered by the security interest, and the rents and profits of the premises

are assigned to the United States as further security for the payment of the debts in the event of any default or defaults in paying the principal, interest, taxes, water rents or premiums of insurance or in the event of a nonfinancial default or defaults.

"(d) DURATION OF RECEIVERSHIP.—In an action to foreclose a security interest, the receivership shall terminate when the purchaser at the foreclosure sale takes lawful possession of the property unless the court directs otherwise. In all other actions, the receivership shall not continue past the entry of judgment unless the court orders it continued under section 3302(b) or unless the court otherwise directs its continuation.

"(e) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds and his accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the United States with a copy thereof.

"(f) REMOVAL.—Upon motion of any party or upon its own initiative, the court which appointed the receiver may remove him at any time with or without cause.

"(g) PRIORITY.—If more than one court appoints a receiver, the receiver first qualifying under law shall be entitled to take possession, control or custody of the property.

"(h) COMMISSIONS OF RECEIVERS.—(1) GENERALLY.—A receiver is entitled to such commissions not exceeding 5 per centum of the sums received and disbursed by him as the court allows unless the court otherwise directs.

"(2) ALLOWANCE WHERE FUNDS DEPLETED.—If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remained unpaid.

"(3) PROCEDURE.—At the termination of a receivership, the receiver shall file a final accounting of this receipts and disbursements and apply for compensation setting forth the amount sought and the sevices rendered by him.

"SUBCHAPTER C—JUDGMENTS; LIENS

"Sec.
"3201. Judgment by confesson.
"3202. Judgment lien.
"3203. Sale of property subject to judgment lien.
"3204. Interest on judgments.

"SUBCHAPTER C—JUDGMENTS: LIENS

"§ 3201. Judgment by confession

"(a) GENERAL PROVISION.—On application, a court may enter a judgment by confession in favor of the United States without the filing of a civil action for money due and owing.

"(b) VENUE.—The confession of judgment shall be filed in the district in which one or more of the defendants reside, can be found, are doing business at the time of the application, or in cases proceeding by in rem or quasi in rem jurisdiction where the property sought to be adjudicated is located.

"(c) STATEMENT BY DEFENDANT; CONTENTS.—Before a judgment by confession shall be entered, a sworn statement in writing shall be made and signed by the defendant and filed with the court along with the application, stating—

"(1) the amount for which judgment may be entered and authorizing the entry of judgment;

"(2) the facts out of which the debt arose and that the amount confessed is justly due; and

"(3) that the person signing the statement understands that a judgment by confession allows the entry of judgment without further proceedings and authorizes enforced collection of the judgment.

"(d) ENTRY OF JUDGMENT.—The confession of judgment may be filed with the clerk of the court. The clerk shall enter a judgment for the amount confessed.

"(e) CONFESSION BY JOINT DEBTORS.—One or more joint debtors may confess a judgment for a joint debt due. Where all the joint debtors do not join in the confession, the judgment shall be entered and enforced against only those who confessed it. A confessed judgment against some of the joint debtors is not a bar to an action against the other joint debtors.

"(f) ENFORCEMENT OF JUDGMENT BY CONFESSION.—Judgments by confession shall be enforced in the same manner as other judgments.

"§ 3202. Judgment lien

"(a) CREATION OF LIEN GENERALLY.—A judgment shall be a lien upon all real property of a judgment debtor upon filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under section 6323 (f)(1) and (2) of title 26, United States Code.

"(b) IN CRIMINAL CASES.—A judgment obtained by the United States in a criminal case shall create a lien as provided in sections 3565 and 3613 of title 26, United States Code.

"(c) IN TAX CASES.—A judgment obtained by the United States in a tax case shall create a lien co-extensive

with any lien created prior to judgment under section 6321(f) of title 18, United States Code; if no lien was so created prior to the judgment, then the procedure in subsection (a) shall be followed.

"(d) AMOUNT OF LIEN.—A lien created hereunder is for the amount necessary to satisfy the judgment, including costs and interest.

"(e) PRIORITY OF LIEN.—A lien created hereunder shall have priority over any other lien or encumbrance which is perfected later in time. However, liens created under sections 3565 and 3613 of title 26, United States Code, regarding criminal judgments or under section 6321(f) of title 26, United States Code, regarding tax judgments shall have priority as otherwise provided by law.

"(f) DURATION OF LIEN; RENEWAL.—(1) A lien created hereunder is effective, unless satisfied, for a period of twenty years.

"(2) The lien may be renewed for one additional period of twenty years upon filing a notice of renewal in the same manner as the judgment was filed and shall relate back to the date the judgment was filed. The notice of renewal must be filed before the expiration of the first twenty-year period to prevent the expiration of the lien.

"(3) The duration and renewal of a lien created under sections 3565 and 3613 of title 18, United States Code, re-

garding criminal judgments, or a lien created under section 6321(f) of title 26, United States Code, regarding tax judgments shall be as otherwise provided by law.

"(g) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released upon the filing of a satisfaction of judgment or release of lien in the same manner as the judgment was filed to obtain the lien.

"(h) EFFECT OF LIEN UPON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—Any person who has a judgment lien against his property for any debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which such person is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and loans.

"§ 3203. Sale of property subject to judgment lien

"Upon application to the court, the court may order the United States to sell pursuant to the provisions of sections 2001 and 2002 of title 28, United States Code, any real property subject to its judgment lien. This provision shall not

preclude the United States from using an execution sale to sell real property subject to a judgment lien.

"§ 3204. Interest on judgments

"(a) Judgments for money, other than criminal or tax judgments, shall bear interest at the greater of—

"(1) the rate in an express contract or negotiable instrument, if the action was brought for the recovery of an amount due on the contract or negotiable instrument; or

"(2) the rate established by statute or regulation applicable to the debt owed;

"(3) the judgment interest rate established in accordance with this section.

"(b) The judgment interest rate, where applicable, shall be calculated from the date of the entry of the judgment, at a rate equal to 150 per centum of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United State Courts shall distribute notice of that rate and any changes in it to all Federal judges.

"(c) Interest on judgments shall accrue daily from the date of entry of the judgment at the rate determined herein and shall be compounded annually to the date of payment.

"(d) Interest on tax judgments obtained under the Internal Revenue Code shall be allowed under 26 U.S.C. 6621.

"(e) Interest on criminal judgments shall be allowed as provided in title 18 of the United States Code.

"(f) The interest rate on any judgment over one year old may be adjusted to the current rate applicable under this section.

"(g) Nothing in this section shall preclude the assessment of prejudgment interest that is otherwise allowable by law.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"Sec.
"3301. Enforcement of judgments.
"3302. Orders in aid of execution.
"3303. Restraining notice.
"3304. Execution.
"3305. Installment payment order.
"3306. Garnishment.
"3307. Modification of protective order; supervision of enforcement.
"3308. Power of court to punish for contempt.
"3309. Arrest of judgment debtor.
"3310. Discharge.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"§ 3301. Enforcement of judgments

"(a) A judgment may be enforced by any of the remedies set forth in this subchapter, and the court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to supplement these remedies, subject to the provision of Rule 81(b) of the Federal Rules of Civil Procedure.

"(b) The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 of title 28, United States Code, or by execution sale pursuant to section 3304(g) of this subchapter.

"§ 3302. Orders in aid of execution

"Where the judgment debtor has an ownership interest of any kind in property which is not exempt and cannot readily be attached or levied on by ordinary legal process, the United States is entitled to aid from the court by injunction or other appropriate order to reach the property to satisfy the judgment whether the property is located in the same district or other districts.

"(a) ORDER.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for execution or otherwise applied toward the satisfaction of the judgment. Where the judgment debtor or other person refuses to turn over the property, the court may enforce the order by proceedings for contempt or other appropriate order provided the judgment debtor or other person, as appropriate, is served with a copy of the order or has actual notice of the order.

"(b) RECEIVER.—The court may appoint a receiver of the property of the judgment debtor in accordance with section 3108 of this chapter.

"(c) SAME OR INDEPENDENT SUIT.—These proceedings may be brought by the United States in the same suit in which the judgment is rendered or in a new and independent suit.

"(d) COSTS.—Upon request, in a proceeding under this section, the United States shall recover from the judgment debtor reasonable costs, including attorney's fees. This provision shall apply to the extent that recovery of costs by the United States is not provided for under other applicable provisions of Federal law.

"§ 3303. Restraining notice

"(a) ISSUANCE; ON WHOM SERVED; FORM; SERVICE.—A restraining notice may be issued by the clerk of the court or counsel for the United States as officer of the court. It may be served upon any person, except the employer of a judgment debtor where the property sought to be restrained consists of earnings due or to become due to the judgment debtor. It shall be served personally in the same manner as a summons. It shall specify all of the parties to the action, the social security number of the judgment debtor, if known, the date the judgment was entered, the court in which it was entered, the amount of the judgment and the amount when

due thereon, and the names of all parties against whom the judgment was entered. It shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

"(b) EFFECT OF RESTRAINT; PROHIBITION OF TRANSFER; DURATION.—(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any property.

"(2) A person other than the judgment debtor who is served with restraining notice shall not—

"(A) repay any obligation to the judgment debtor;

"(B) return any property to the judgment debtor; or

"(C) sell, assign, transfer or hypothecate any property—

"(i) specifically described in the restraining notice;

"(ii) that the other person knows to be owned by the judgment debtor; or

"(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

"(3) The restraining notice shall remain in effect for one year from the date the notice is served, or until the judgment

is satisfied or the restraining notice is vacated by order of the court, whichever occurs first.

"(c) DISCLOSURE.—The person upon whom a restraining notice is served, other than the judgment debtor, shall disclose to the counsel for the United States, in writing under oath within seven days of receipt of the restraining notice, the type or nature and value of such property of the judgment debtor as may be in his possession or custody. Upon such person receiving or acquiring property of the judgment debtor after receipt of a restraining notice, that person shall disclose to counsel for the United States, in writing under oath within seven days of receipt of the property, the type or nature and value of such property of the judgment debtor as may be in his possession or custody.

"(d) DISCOVERY.—Any discovery request under the Federal Rules of Civil Procedure which accompanies this restraining notice and which seeks the disclosure of the type, nature and value of property of the judgment debtor must be responded to within ten days of service of the notice and discovery request or within ten days after property of the judgment debtor comes into the possession of the person served.

"(e) SUBSEQUENT NOTICE.—Leave of court is required to serve more than one restraining notice upon the same

person, other than the judgment debtor, with respect to the same judgment.

"(f) NOTICE TO JUDGMENT DEBTOR.—A copy of the restraining notice shall be mailed by first class mail by counsel for the United States to the judgment debtor at the time of service of the restraining notice on a person other than the judgment debtor.

"§ 3304. Execution

"(a) PROPERTY SUBJECT TO EXECUTION.—All property which the judgment debtor possesses and in which the judgment debtor has an interest shall be subject to levy pursuant to a writ of execution; co-owned property shall be subject to execution to the same extent as it is under the law of the state in which it is located. The judgment debtor must identify any property claimed to be exempt under the provisions of subchapter E.

"(b) EXECUTION LIEN.—A lien shall be created in favor of the United States on all property levied upon under a writ of execution and shall date from the time of the levy. This lien shall have priority over all subsequent liens and shall be for the amount due on the judgment. If the United States has a judgment lien, the execution lien shall relate back to the judgment lien date.

"(c) FORM OF WRIT OF EXECUTION.—(1) GENERAL REQUIREMENTS.—An execution writ shall specify the date

that the judgment was entered, the court in which it was entered, the amount of the judgment if for money, the amount of the costs, and the sum actually due when the writ is issued, the amount of interest due, the rate of postjudgment interest, and the name of the party against whom the judgment was entered. The writ shall direct the United States marshal to satisfy the judgment out of all property, real and personal, of the judgment debtor not otherwise exempt pursuant to this chapter. An execution writ shall direct that only the property in which a named judgment debtor, who is not deceased, has an interest be levied upon or sold thereunder, and shall state the last known address of that judgment debtor.

"(2) There shall be no requirement that personal property be levied upon and sold prior to levy and sale of real property of the judgment debtor.

"(3) EXECUTION FOR DELIVERY OF CERTAIN PROPERTY.—An execution issued upon a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

"(4) EXECUTION FOR POSSESSION OR VALUE OF PERSONAL PROPERTY.—If the judgment is for the recovery of

personal property or its value, the writ shall command the marshal, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

"(d) ISSUANCE.—(1) The clerk of any court where a judgment is docketed, entered or registered, upon written application of counsel for the United States, shall, and without other or further order of a judge of that court, forthwith issue writs of execution. The writs shall be addressed to "Any United States Marshal," and may be served and executed in any judicial district of the United States, but shall be returnable to the issuing court. The writ shall be signed by the clerk of the court issuing the writ.

"(2) Multiple writs may issue simultaneously, and successive writs may issue before the retun date of a writ previously issued.

"(e) RECORDS OF UNITED STATES MARSHAL.—(1) The United States marshal receiving the execution shall endorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received.

"(2) The United States marshal shall make a memorandum in writing of the date of every levy and specify the property upon which the levy has been made on the process or in

an attached schedule. The memorandum or schedule shall also set forth the marshal's costs, expenses and fees.

"(f) LEVY OF EXECUTION.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the debtor found within his district, unless otherwise directed by counsel for the United States.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the debtor.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the debtor in the same manner that a summons is served in a civil action and so make his return thereof. If the United States marshal is unable to serve the writ upon the debtor, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and motion of levy on it or in a conspicuous place in the vicinity of it describing in the notice

of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the debtor in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(5) LEVY ON PROPERTY OTHERWISE SECURED OR PLEDGED.—

"(A) Real property subject to a security interest or conveyed in trust as security for any debt or contract may be levied upon and sold on execution against the interest of the judgment debtor, subject to such mortgage, and the terms and conditions thereof.

"(B) Personal property pledged, assigned or security for any debt or contract, may be levied upon and sold on complying with the conditions of the pledge, assignment or security interest.

"(g) EXECUTION SALE PROCEDURES.—(1) SALE OF REAL PROPERTY.—

"(A) Real property, or any interest therein, shall be sold for cash at public auction at the courthouse of the county, parish or city in which the greater part of the property is located or upon the premises or some parcel thereof.

"(B) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least three weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first of these publications shall appear not less than twenty-five days immediately preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, sufficient to identify the property, such as a street address the urban property, and the survey identification and location for rural property, but it shall not be necessary for it to contain field notes.

"(C) The United States marshal shall give written notice of public sale by personal delivery, or certified or registered mail, to persons and parties known to him to claim an interest in property under execution, including lienholders, co-owners and tenants, at least twenty-five days prior to the day of sale, to the last known address of such persons or parties.

"(2) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each

lot, tract, or parcel must be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

"(3) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the debtor may divide the property into lots of not less than fifty acres, furnish a survey of such prepared by a registered surveyor, and designate the order in which those lots shall be sold. When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

"(4) SALE OF PERSONAL PROPERTY.—

"(A) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, or at the courthouse of the county, parish or city wherein it is located, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale, except shares of stock in corporations, and in cases, when by reason of the type or nature of the property, it is impractical to exhibit it, or where the debtor has merely an interest without the right to the exclusive possession, in which case the interest of

the debtor may be sold and transferred without the presence of the property.

"(B) Notice of the time and place of the sales of personal property shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made, and by mailing a copy by registered or certified mail to the judgment debtor at his last known address, or by personal delivery.

"(5) POSTPONEMENT OF SALE.—The United States marshal may postpone an execution sale from time to time continuing the posting of notice and/or publication of the notice until the date to which the sale is postponed, and appending, at the foot of such notice of each successive postponement the following:

"The above sale is postponed until the day of , 19 , at o'clock .M., , United States Marshal for the District of , by , Deputy, dated .

"(6) BIDDING REQUIREMENTS; LIABILITY OF BIDDER; RESALE.—

"(A) The United States marshal may require of any bidder at any sale a cash deposit of as much as

twenty percent of the sale price before the bid is received.

"(B) The cash deposit of any successful bidder at an execution sale shall be forfeited to the United States if he fails to comply with the terms of the sale; in addition, he shall be liable to the United States for all losses incurred by the United States at a subsequent sale of the same property. The liability for losses shall be limited to the difference between the amount off the deposit which was forfeited and the amount accepted by the United States as the highest bid by the defaulting bidder at the defaulted sale plus the costs of the defaulted sale. This liability shall be reduced by the amount the United States realizes from the subsequent sale, if any.

"(7) RESALE OF PROPERTY.—When the terms of the sale are not complied with by the bidder, the United States marshal shall proceed to sell the property again on the same day, if there is sufficient time; but if not, he shall readvertise and sell the property.

"(8) TRANSFER OF TITLE AFTER SALE.—

"(A) When the sale has been made and its terms complied with, the United States marshal shall execute and deliver any and all documents necessary to transfer ownership to the purchaser, without warranty, all

the rights, titles, interest, and claims that the judgment debtor had in the property sold to the purchaser.

"(B) If the purchaser dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the estate of the purchaser, and it shall have the same effect as if accomplished during the lifetime of the purchaser.

"(9) PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE.—The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

"(10) NO RIGHT OF REDEMPTION.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

"(11) DISTRIBUTION OF SALE PROCEEDS.—

"(A) The United States marshal shall first deliver to the judgment debtor, or his agent or attorney, such amounts to which he is entitled from the sale of partially exempt property as set forth in subchapter E of this chapter.

"(B) The United States marshal shall retain from the proceeds of a sale of property an amount equal to

the reasonable expenses incurred in making the levy and keeping and maintaining the property.

"(C) The United States marshal shall deliver the balance of the money collected on execution to the counsel for the United States at the earliest opportunity.

"(D) If more money is received from the sale of the property than is sufficient to satisfy the executions held by the United States marshal, he shall pay forthwith the surplus to the judgment debtor or his agent or attorney.

"(h) REPLEVY.—(1) Any personal property taken in execution may be returned to the defendant by the United States marshal upon the delivery by the defendant to him of a bond prior to the execution sale, payable to the United States, with two or more good and sufficient sureties, to be approved by the United States marshal, conditioned upon the delivery of the property to the United States marshal at the time and place named in the bond, to be sold according to law, or for the payment to the United States marshal of a fair value thereof, which shall be stated in the bond.

"(2) Where property has been replevied, as provided above, the judgment debtor may sell or dispose of the property paying the United States marshal the stipulated value thereof.

"(3) In the case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the United States marshal shall forthwith endorse the bond 'Forfeited' and return it to the clerk of the court from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk shall issue execution against the principal judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be endorsed by the clerk on the execution.

"(i) DEATH OF JUDGMENT DEBTOR.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the court having jurisdiction over the estate of the deceased. The execution lien may be enforced against the executor, administrator, or personal representative of the estate of the deceased; or if there be none, against the heirs or devisees of the property of the deceased receiving same, but only to the extent of the value of the property coming to them.

"(j) WHEN EXECUTION NOT SATISFIED.—When the property levied upon does not sell for enough to satisfy the execution, the United States marshal shall proceed on the

same writ of execution as to other property of the judgment debtor.

"(k) RETURN ON EXECUTION.—(1) The United States marshal shall make a written return on each writ of execution to the court from which the writ was issued and deliver a copy to counsel for the United States who requested the writ. It shall be returnable ninety days from the date of issuance unless counsel for the United States has specified an earlier date. The return shall be filed by the clerk of the court from which the writ was issued.

"(2) The United States marshal shall state concisely what was done in pursuance of the requirements of the writ.

"(3) The return shall be made forthwith if satisfied by the collection of the money, or if ordered by counsel for the United States, which order shall be noted on the return.

"§ 3305. Installment payment order

"Where it is shown that the judgment debtor is receiving or will receive money from any source or is attempting to impede the United States by rendering services without adequate compensation, upon motion of the United States and notice to the judgment debtor, the court shall order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing

the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor, any payments required to be made by the judgment debtor or deducted from the money he would otherwise receive in satisfaction of other judgments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the United States by rendering services without adequate compensation, the reasonable value of the services rendered.

"Upon motion of the United States, and upon a showing that the debtor's financial circumstances have changed or that assets not previously disclosed by the debtor have been discovered, the court may increase the amount of payments or alter their frequency or require full payment.

"§ 3306. Garnishment

"(a) GENERAL.—A court may issue writs of garnishment, either prejudgment or postjudgment against the property of a debtor which is in the possession, custody or control of a third person in order to satisfy a judgment against the debtor; co-owned property shall be subject to garnishment to the same extent as it is under the law of the States in which it is located. The United States may request and a court shall issue simultaneous separate writs of garnishment to several garnishees. All writs of garnishment issued pursuant to these

provisions shall be continuing and shall terminate only as provided herein.

"(b) WRIT.—(1) GENERAL REQUIREMENTS.—The United States shall include in its application for a writ of garnishment, the following—

"(A) any matters required by section 3104 when seeking prejudgment garnishment;

"(B) the debtor's name, social security number, if known, and the debtor's last known address;

"(C) the nature and amount of the debt alleged to be owed and that demand on the debtor for payment of the debt has been made, but the debtor has not paid the amount due. A money judgment must be alleged for postjudgment garnishment; and

"(D) that the garnishee is believed to be indebted to the debtor or have possession of property of the debtor.

"(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—

"(A) Where property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association, shall be the garnishee.

"(B) Where property consists of a right to or interest in a decedent's estate or any other property or fund held or controlled by a personal representative or fiduciary, the personal representative or fiduciary shall be the garnishee.

"(C) Where property consists of an interest in a partnership, any partner other than the debtor, shall be the garnishee on behalf of the partnership.

"(D) Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that in the case of a security which is transferable in the manner set forth in State law, the firm or corporation which carries on its books an account in the name of the debtor in which is reflected such security, shall be the garnishee; *Provided, however*, That if such security has been pledged, the pledgee shall be the garnishee.

"(c) ISSUANCE OF WRIT.—(1) CLERK'S REVIEW.—The clerk of the court shall review the application for post-judgment writs of garnishment and if it meets the requirements set forth herein, shall issue an appropriate writ. The

clerk shall issue prejudgment writs of garnishment as authorized by the court.

"(2) FORM OF WRIT.—

"(A) GENERAL PROVISIONS.—The writ shall state—

"(i) The nature and amount of the debt. If interest is accruing, the rate of accrual thereafter shall be stated. If a judgment is involved, the amount of any costs included in the judgment should be stated.

"(ii) The name and address of the garnishee.

"(iii) The name and address of counsel for the United States.

"(iv) The last known mailing address of the debtor.

"(v) That the garnishee shall answer the writ within ten days of service of the writ.

"(B) EARNINGS GARNISHMENT.—The United States may apply for garnishment of the non-exempt disposable earnings of a natural person. The writ for the garnishment of earnings shall direct the garnishee to withhold and retain the non-exempt earnings for which the garnishee is indebted to the debtor at the time of receipt of the writ and may thereafter become

indebted to the debtor pending further order of the court.

"(C) GARNISHMENT OF OTHER PROPERTY.—As to all non-earnings property of a debtor who is a natural person and all property of other debtors in the possession, custody and control of the garnishee at the time the writ is received by the garnishee and anytime thereafter, the writ shall direct the garnishee to retain possession, custody and control of and not to transfer or return the property pending further order of the court.

"(D) SERVICE OF WRIT.—The United States may serve the garnishee with a copy of the writ by first class mail or by delivery by the United States marshal as provided by Rule 4 of the Federal Rules of Civil Procedure. The United States shall, at the same time, serve the debtor with a copy of the writ by first class mail to the debtor's last known address; counsel for the United States shall certify to the court that this service was made.

"(E) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath whether it is indebted to the debtor or has custody, control or possession of the debtor's property; a description of the indebtedness or

property; whether the indebtedness or property is subject to any prior garnishments or levies and a description of any such claim; and whether the indebtedness or property is subject to any exemptions from garnishment. In addition, if the writ of garnishment is against the earnings of the debtor, the garnishee shall state whether the debtor was employed at the time the writ was received, and, if so, how much was owed at the time; and whether the garnishee anticipates owing earnings to the debtor in the future, and, if so, the amount and whether the pay period will be weekly or another specified period. In all cases, the garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States. The copy sent to the debtor shall be accompanied by instructions to the debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections. Any garnishee, including a corporation, may file an answer without the representation of an attorney.

"(F) OBJECTIONS TO ANSWER.—Within twenty days after receipt of the answer, the debtor and the United States may file a written objection to the answer and request a hearing on the objection. The party objecting must state the grounds for the objection

and bears the burden of proving them. A copy of the objection and request for hearing shall be served on the garnishee and the other party. The court shall set a hearing within ten to fifteen days after the date the request was received by the court, and give notice of the date to all parties.

"(G) GARNISHEE'S FAILURE TO ANSWER OR PAY.—If a garnishee fails to answer or pay within the time specified, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ or pay by the appearance date. If the garnishee fails to appear or does appear and fails to show good cause why he failed to comply with the garnishment writ, the court shall enter judgment by default against the garnishee for the full amount of the past debt owed by the debtor.

"The court shall award reasonable attorney's fees to the United States and against the garnishee if the writ has not been answered within the time specified therein and a petition requiring the garnishee to appear was filed as provided in this section. Failure to answer or pay within the time specified in the writ may also be punished as a contempt of the court.

"(H) DISPOSITION ORDER.—After the garnishee files its answer and if no hearing is required, the court

shall promptly enter an order directing the garnishee as to the disposition of the debtor's property. If a hearing is required, the order shall be entered within five days of the hearing.

"(I) PRIORITIES.—Court orders and garnishments for the support of a person shall have priority over a writ of garnishment issued pursuant to these provisions. As to any other garnishment or levy, a garnishment issued pursuant to these provisions shall have priority over those which are later in time and shall be satisfied in the order in which the writs are served upon the garnishee.

"(J) ACCOUNTING.—The debtor or garnishee may request an accounting on a garnishment within ten days after the garnishment terminates. The United States shall give a written accounting to the debtor and garnishee of all earnings and property it receives under a writ garnishment within twenty days after it receives the request of the debtor or garnishee. Within ten days after the accounting is received, the debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting must state grounds for the objection. The court shall set a hearing on the objection within ten to fifteen

days after the court receives the request for a hearing.

"(K) DISCHARGE OF GARNISHEE'S OBLIGATION.—A garnishee shall be discharged as set forth in section 3311 of this subchapter.

"(L) TERMINATION OF GARNISHMENT.—A garnishment proceeding hereunder can be terminated by—

"(i) the court quashing the writ of garnishment;

"(ii) exhaustion of earnings or property in the possession, custody or control of the garnishee, unless the garnishee reinstates or reemploys the debtor within ninety days of dismissal or resignation; or

"(iii) satisfaction of the debtor's obligation to the United States.

"§ 3307. **Modification of protective order; supervision of enforcement**

"Within the provisions of this chapter, the court may at any time on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

"§ 3308. **Power of court to punish for contempt**

"A court shall have power to punish a civil or criminal contempt committed with respect to an enforcement procedure or order under this chapter.

"§ 3309. **Arrest of judgment debtor**

"Upon motion of the judgment creditor without notice, where it is shown by affidavit or otherwise that the judgment debtor is about to depart from the jurisdiction of the court, or keeps himself concealed therein with intent to hinder, delay or defraud the judgment creditor, and that there is reason to believe that the judgment debtor has in his possession or custody non-exempt property in which he has an interest, the court may issue a warrant directed to the United States marshal to arrest the judgment debtor forthwith and bring him before the court. The United States marshal shall serve upon the judgment debtor a copy of the warrant and supporting documents at the time of arrest. When the judgment debtor is brought before the court, the court may order that he give a bond or undertaking in a sum to be fixed by the court, that he will appear before the court for examination and that he will obey the terms of a restraining notice contained in the order.

"§ 3310. **Discharge**

"A person who pursuant to an execution of order pays or delivers to the United States, a United States marshal or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he

owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.

"SUBCHAPTER E—EXEMPT PROPERTY

"Sec.
"3401. Exempt property.
"3402. Limitation on exempt property.

"SUBCHAPTER E—EXEMPT PROPERTY

"§ 3401. Exempt property

"Except as provided under section 3402, the following property of natural persons shall be exempted from the enforcement procedures under the provisions of this chapter as to debts owed the United States—

"(a) The debtor's aggregate interest, not to exceed $7,500 in value in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

"(b) The debtor's interest, not to exceed $600 in value, in one motor vehicle.

"(c) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family or household use of the debtor.

"(d) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family or household use of the debtor.

"(e) The debtor's aggregate interest, not to exceed $750 in value in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

"(f) Professionally prescribed health aids for the debtor.

"(g) The debtor's right to receive—

"(1) a social security monthly benefit payable under title II or title XVI of the Social Security Act, unemployment compensation, state or local public assistance benefit;

"(2) a veteran's benefit;

"(3) a disability, illness, or unemployment benefit (including a benefit to which the debtor is entitled as a beneficiary under title XVIII of the Social Security Act);

"(4) alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(5) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract

on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

"§ 3402. **Limitations on exempt property**

"(a) Property upon which a judgment debtor has voluntarily granted a lien, shall not be exempt to the extent of the balance due on the debt secured thereby.

"(b) If, within ninety days prior to judgment or thereafter, the debtor has transferred non-exempt property and as a result acquires, improves or increases in value exempt property, his interest shall not be exempt to the extent of the increased value.

"(c) The United States may require the judgment debtor to file a statement with regard to each claimed exemption; the original shall be filed with the court in which the enforcement proceeding is pending, and a copy served upon counsel for the United States. The statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the judgment debtor's ownership interest.

"(d) The United States, by application to the court where an enforcement proceeding is pending, may request a hearing on the applicability of any exemption claimed by the judgment debtor. The court shall determine whether the

judgment debtor is entitled to the exemption claimed and the value of the property with respect to which the exemption is claimed; the judgment debtor shall bear the burden of going forward with evidence and of persuasion. The value of the property must be established by credible, independent evidence in addition to the debtor's testimony; tax assessments shall create a rebuttable presumption of the value of the property assessed.

"(e) Assertion of an exemption shall not prevent seizure and sale of the property to which such exemption applies. However, where an exemption has been validly and properly asserted, the sale proceeds for that item of property must be applied first to satisfy the dollar value of the exemption and then to the balance of the judgment. Any excess remaining after payment of judgment shall be paid to the judgment debtor.

"SUBCHAPTER F—FRADULENT TRANSFERS

"Sec.
"3501. Definitions.
"3502. Insolvency.
"3503. Value.
"3504. Transfer fraudulent as tio the United States on present and future claims.
"3505. Transfer fraudulent as to the United States on a present claim.
"3506. When transfer is made or obligation is incurred.
"3507. Remedies of the United States.
"3508. Defenses, liability and protection of transferee.
"3509. Supplementary provision.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"§ 3501. Definitions

"As used in this subchapter—

"(a) 'Affiliate' means—

"(1) a person who directly or indirectly owns, controls, or holds with power to vote, 20 per centun or more of the outstanding voting securities of the debtor other than a person who holds the securities—

"(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

"(B) solely to secure a debt, if the person has not exercised the power to vote;

"(2) a corporation 20 per centum or more of whose voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 per centum or more of the outstanding voting securities of the debtor, other than the person who holds a securities—

"(A) as a fiduciary or agent without sole power to vote the securities;

"(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

"(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"(b) 'Asset' means property of a debtor, but does not include—

"(1) property to the extent it is encumbered by a valid lien; or

"(2) property to the extent it is exempt under Subchapter E of this chapter.

"(c) 'Insider' includes—

"(1) if the debtor is an individual—

"(A) a relative of the debtor or of a general partner of the debtor;

"(B) a partnership in which the debtor is a general partner;

"(C) a general partner in a partnership described in subsection (c)(1)(B); or

"(D) a corporation of which the debtor is a director, officer, or person in control.

"(2) if the debtor is a corporation—

"(A) a director of the debtor;

"(B) an officer of the debtor;

"(C) a person in control of the debtor;

"(D) a partnership in which the debtor is a general partner;

"(E) a general partner in a partnership described in subsection (c)(2)(D); or

"(F) a relative of a general partner, director, officer, or person in control of the debtor.

"(3) if the debtor is a partnership—

"(A) a general partner in the debtor;

"(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

"(C) another partnership in which the debtor is a general partner;

"(D) a general partner in a partnership described in subsection (c)(3)(C); or

"(E) a person in control of the debtor.

"(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

"(5) a managing agent of the debtor.

"(d) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance

of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceeding, a common law lien, or a statutory lien.

"(e) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"(f) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"(g) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 3502. Insolvency

"(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

"(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

"(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

"(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

"(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 3503. Value

"(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

"(b) For the purposes of sections 3504(a)(2) and 3507, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, non-collusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the

interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

"(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 3504. Transfer fraudulent as to the United States on present and future claims

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States, whether its claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation—

"(1) with actual intent to hinder, delay, or defraud the United States or any other creditor of the debtor; or

"(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor—

"(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(B) intended to incur, or believed or reasonably should have believed that he would incur,

debts beyond his ability to pay as they became due.

"(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether—

"(1) the transfer or obligation was to an insider;

"(2) the debtor retained possession or control of the property transferred after the transfer;

"(3) the transfer or obligation was disclosed or concealed;

"(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(5) the transfer was of substantially all of the debtor's assets;

"(6) the debtor absconded;

"(7) the debtor removed or concealed assets;

"(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

"(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 3505. Transfer fraudulent as to the United States on a present claim

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States on its claims which arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

"(b) A transfer made by a debtor is fraudulent as to the United States on its claim which arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the that time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 3506. When transfer is made or obligation is incurred

"For the purposes of this subchapter—

"(a) a transfer is made—

"(1) with respect to an asset that is real property, other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

"(2) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that the United States on a simple contract cannot acquire a judicial lien otherwise than under this subchapter that is superior to the interest of the transferee.

"(b) If applicable law permits the transfer to be perfected as approved in subsection (a) and the transfer is not so perfected before the commencement of an action for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action.

"(c) If applicable law does not permit the transfer to be perfected as provided in subsection (a), the transfer is made when it becomes effective between the debtor and the transferee.

"(d) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(e) An obligation is incurred—

"(1) if oral, when it becomes effective between the parties; or

"(2) if evidenced by a writing, when the writing was executed by the obligor is delivered to or for the benefit of the obligee.

"§ 3507. Remedies of the United States

"(a) In an action for relief against a transfer or obligation under this subchapter, the United States, subject to the limitations in section 3508, may obtain—

"(1) avoidance of the transfer or obligation to the extent necessary to satisfy the claim of the United States;

"(2) an attachment or other remedy against the asset transferred or other property of the transferee in accordance with the procedure described by this chapter;

"(3) subject to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure—

"(A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

"(B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

"(C) any other relief the circumstances may require.

"(b) If the United States has obtained a judgment on a claim against the debtor, if the court so orders, it may levy execution on the asset transferred or its proceeds.

"§ 3508. Defenses, liability and protection of transferee

"(a) A transfer or obligation is not voidable under section 3504(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

"(b) Except as otherwise provided in this section, to the extent a transfer is vidoable in an action by the United States under section 3507(a)(1), it may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy its claim, whichever is less. The judgment may be intered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

"(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) A transfer is not voidable under section 3504(a)(2) or section 3505 if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the jurisdiction where the property is located.

"(f) A transfer is not voidable under section 3505(b)—

"(1) to the extent the [illegible]ler gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider, or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose, as well as an antecedent debt of the debtor.

"§ 3509. Supplementary provision

"Unless displaced by the provisions of this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"SUBCHAPTER G—PARTITION

"Sec.
"3601. Action by United States for partition.
"3602. Service of process in partition action.
"3603. Trial; commissioners; decree of partition.
"3604. Partition by sale.
"3605. Costs.

"SUBCHAPTER G—PARTITION

"§ 3601. Action by United States for partition

"(a) The United States, as co-owner or claimant of real or personal property, or an interest therein, may compel a partition of the property among the co-owners and tenants.

"(b) The district court shall have original jurisdiction of any civil action brought by the United States for the partition of property. The action for partition shall be filed in the judicial district in which the property, or a part thereof, is located. An action in a State court in which the United States is a defendant and in which the United States seeks partition may be removed to the district court.

"(c) The United States shall file a complaint stating—

"(1) the name and residence, if known, of each co-owner or claimant to such property;

"(2) the share of interest, if known, of each co-owner or claimant in such property;

"(3) a description of the property sought to be partitioned; and

"(4) the estimated value of the property for which partition is sought.

"§ 3602. Service of process in partition action

"(a) Personal service of summonses and complaints and other process shall be made in accordance with Rules 4 (c) and (d) of the Federal Rules of Civil Procedure upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

"(b) Upon the filing of a certificate by counsel for the United States stating that it is believed that a defendant cannot be personally served, because after diligent inquiry

within the State in which the complaint is filed his place of residence cannot be ascertained by the United States or, if ascertained, that it is beyond the territorial limits of personal service as provided in Rules 4 (c) and (d) of the Federal Rules of Civil Procedure, service of Notice of Summons and Complaint shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation in the State where the property is located, once a week for three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to 'Unknown Others.' Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of counsel for the United States, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

"§ 3603. Trial; commissioner; decree of partition

"(a) All questions of law or equity affecting the title of the property which may arise, and the determination of the share or interest of each of the co-owners or claimants shall be tried by the court without a jury.

"(b) The court shall determine whether the property, or any part thereof, is susceptible of partition. If the court determines that the whole, or any part of the property is susceptible of partition, then the court shall enter a decree directing the partition of the property which is held to be susceptible of partition, describing it and specifying the share or interest to which each party is entitled. The court shall then appoint three or more competent and disinterested persons as commissioners to make the partition in accordance with the court's decree, the majority of the commissioners may act.

"(c) The court may appoint a surveyor to assist the commissioners in making a partition of real estate. The commissioners may cause the real estate to be surveyed and partitioned into several tracts or parcels.

"(d) The court may appoint an appraiser or appraisers to value the property and file an appraisal report with the court and the commissioners, as the court directs.

"(e) The commissioners shall divide the property into as many shares as there are persons entitled thereto, as determined by the court, having due regard in the division of the property to the situation, quantity, and advantage of each share, so that the shares may be equal in value, as nearly as may be, in the proportion to the respective shares or interests of the parties entitled thereto.

"(f) The commissioners shall report in writing to the court; and the report shall be determined by a majority of the commissioners and the contents shall be governed by the provisions of Rules 53(e) (1) and (2) of the Federal Rules of Civil Procedure. The report shall also contain the following—

"(1) The several tracts, units, or parcels into which the property was divided (describing each particularly);

"(2) the number of shares and the estimated value of each share;

"(3) the allotment of each share; and

"(4) field notes and maps as to each estate, as may be necessary.

"The findings and reports of the commissioners shall have the effect, and be dealt with by the court in accordance with the practice prescribed in Rule 53(e)(2).

"(g) The decree of the court confirming the report of commissioners in a partition of property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by warranty deed as in the case of real property or by bill of sale as to personal property, from the other parties in the action.

"(h) All conditions, restrictive covenants, and encumbrances against the property that applied to the property prior to the partition shall remain against the property as

partitioned unless those restrictions, covenants and encumbrances have been included and are subject to the partition action.

"§ 3604. Partition by sale

"Should the court determine that a fair and equitable division of the property, or any part thereof, cannot be made, the court shall order a sale of that part which is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as provided by title 28 United States Code, chapter 127, or through a receiver, as the court so orders. The proceeds of such sale shall be paid into the court and partitioned among the persons and parties entitled thereto according to their respective interests.

"§ 3605. Costs

"Costs shall be taxed against each party to whom a share has been allotted in proportion to the value of such share.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"Sec.
"3701. United States foreclosures governed by Federal law.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"§ 3701. United States foreclosures governed by Federal law

"Unless the documents specifically adopt State law, any action by the United States to foreclose security interests in real property shall be governed by the Federal statutes and regulations, provisions set forth in the transaction documents and by Federal common law where there is no governing statute, regulation or provision, and not by the State law where the real property is located. This shall include, but not be limited to, questions regarding redemption rights and deficiency judgments.

"§ 3702. Deficiency rights on federally guaranteed or insured loans

"Unless the documents specifically adopt State law, the right of the United States to collect a deficiency following the foreclosure of a loan guaranteed or insured by the United States or any agency thereof shall be governed by Federal statutes, regulations, and the provisions set forth in the transaction documents. The rights of the United States under this section shall apply notwithstanding the provisions of any State law and without regard to the method used by the loan holder to foreclose the loan.

TITLE II—AMENDMENTS TO OTHER LEGISLATION

SEC. 201. Section 505 of title 11, United States Code, is amended by adding at the end thereof the following subsection:

"(d) Payments of taxes under this title to a governmental unit may be applied by the governmental unit in a manner that preserves alternative sources of collection, if any.".

SEC. 202. Section 507(a) of title 11, United States Code, is amended by adding at the end thereof the following subsection:

"(8) Eighth, other allowed unsecured claims of governmental units, except noncompensatory penalty claims.".

SEC. 203. Section 523(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "or" at the end of section 523(a)(9); and

(b) by deleting "." at the end of section 523(a)(10) and adding "; and" in lieu thereof; and

(c) by adding the following subsections at the end of section 523(a):

"(11) to the extent such debt arises from an order providing for restitution or other compensation to vic-

tims of criminal acts or witnesses participating in criminal proceedings.

"(12) to the extent such debt arises from a criminal appearance bond.

"(13) to the extent such debt is for a payment or any part thereof made under title II (relating to the old-age, survivors, and disability insurance program) or title XVI (relating to the supplemental security income program) of the Social Security Act (including a State supplementary payment made under an agreement pursuant to section 1616(a) of such Act or section 212(b) of Public Law 93–66) in excess of the correct amount; or

"(14) benefit overpayments arising under title XVIII of the Social Security Act.".

SEC. 204. Section 523(a)(6) of title 11, United States Code, is amended to read as follows:

"(6) for injury to another entity or to the property of another entity resulting from an intentional wrongful act of the debtor;"

SEC. 205. Section 523(a) of title 11, United States Code, is amended to read as follows:

(a) subsection (8) is amended to read as follows:

"(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental

unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—

(b) subsection (8)(A) is amended to read as follows:

"(A) such loan, benefit, scholarship or stipend overpayment or loan first becomes due ten years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 206. Section 1129(a)(9)(B) of title 11, United States Code, is amended to read as follows:

"(B) with respect to a class of claims of a kind specified in sections 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(8) of this title, each holder of a claim of such class will receive—".

SEC. 207. Section 1129(a)(9)(C) of title 11, United States Code, is amended to read as follows:

"(C) with respect to a claim of a kind specified in section 507(a)(7) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim or six years after confirmation for such

claims that have not been assessed, of a value as of the effective date of the plan, equal to the allowed amount of such claim.".

SEC. 208. Section 1129 of title 11, United States Code, is amended by adding the following at the end thereof:

"(e) For purposes of determining the value of any secured or unsecured tax claim, the appropriate interest rate shall be the statutory rate applicable to unpaid taxes owing a governmental unit.".

SEC. 209. Section 1141(d)(2) of title 11, United States Code, is amended to read as follows:

"(2) The confirmation of a plan does not discharge an individual debtor from any debt excepted from discharge under section 523 of this title and it does not discharge any other debtor from discharge of any debt excepted from discharge under section 523(a)(1) (7) or (11) of this title.".

SEC. 210. Section 1222(a) of title 11, United States Code, is amended as follows:

(a) by adding the word "non-tax" after "all" in subsection 1222(a)(2) and by deleting the word "and" at the end thereof;

(b) by adding the following after section 1222(a)(2):

"(3) provide for deferred cash payments of a value, as of the effective date of the plan, equal to the

allowed amount of any tax claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and"; and

(c) by redesignating subsection (3) as subsection (4).

SEC. 211. Section 1225(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "and" at the end of subsection 1225(a)(5)(C); and

(b) by redesignating subsection (6) as subsection (7); and

(c) by adding the following new subsection immediately after 1225(a)(5):

"(6) the value of any allowed secured or unsecured tax claim shall be determined by using the appropriate statutory rate of interest applicable to unpaid taxes owing a governmental unit; and".

SEC. 212. Section 1322(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) provide for deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of any claims entitled to priority under section 507 of this title, unless the holder of a particu-

lar claim agrees to a different treatment of such claim; and".

SEC. 213. Section 1325(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "and" from the end of section 1325(a)(5)(C); and

(b) by redesignating subsection (6) as subsection (7); and

(c) by adding the following new subsection after 1325(a)(5):

"(6) the value of any allowed secured or unsecured tax claim shall be determined by using the appropriate statutory rate of interest applicable to unpaid taxes owing a governmental unit; and".

SEC. 214. Section 1328(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) of the kind specified in section 523(a) (1), (5), (7), (8) or (11) of this title.".

SEC. 215. Section 3013 of title 18, United States Code, is amended to read as follows:

"§ 3013. Special assessment on convicted persons

"a. The court shall assess on any person convicted of a felony;

(1) The amount of one hundred dollars per count if the defendant is an individual; and

(2) The amount of four hundred dollars per count if the defendant is a peson other than an individual.

"b. Any amount so assessed shall be collected in the manner that fines are collected in criminal cases, except that no interest shall be charged on any assessment.

"c. The obligation to pay the assessment ceases upon the death of the defendant or the expiration of five years after the date of the judgment, whichever occurs first.".

SEC. 216. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require.".

SEC. 217. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the

value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond.".

SEC. 218. Section 3142(g)(4) of title 18, United States Code, is amended by—

(a) striking out "(c)(2)(k)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(b) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 219. Chapter 207 of title 18, United States Code, is amended as follows:

(a) by adding "3151. Refund of Forfeited Bail." to the table of sections; and

(b) by adding the following section immediately after section 3150:

"§ 3151. Refund of Forfeited Bail

"Appropriations shall be available to refund money erroneously received and deposited in the United States Treasury and available to refund any part of forfeited bail deposited into the general fund of the United States Treasury and ordered remitted under the Federal Rules of Criminal Procedure.".

SEC. 220. Section 3552 of title 18, United States Code, is amended:

(a) by adding the following to the end of subsection 3552(d):

"The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed."; and

(b) The amendment made by subsection (a) shall take effect on the date of the taking effect of section 3552(d) of title 18, United States Code.

SEC. 221. Section 3565(a) of title 18, United States Code, is amended as follows:

(a) in subsection 3565(a)(1), by striking out "by execution against the property of the defendant"; and

(b) by also striking out of subsection 3565(a)(1) "civil cases." and inserting in lieu thereof "accordance with chapter 176 of title 28. The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case."; and

(c) in subsection 3565(a)(4), by deleting the word "Salaries" and inserting in lieu thereof the following:

"Notwithstanding any contrary provision in Chapter 176 of title 28, United States Code, salaries."; and

(d) in subsection 3565(a)(5), the second sentence should be deleted.

SEC. 222. Section 3579(f)(4) of title 18, United States Code, is amended by adding the following:

(a) by deleting the "." at the end thereof; and

(b) by adding at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 223. Section 3613 of title 18, United States Code, is amended as follows:

(a) subsection (d) of section 2613 of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by deleting the second sentence; and

(b) subsection (e) of section 3613 of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended as follows:

(1) by striking out "by execution against the property of the person fined";

(2) by striking out "civil cases," and inserting in lieu thereof "accordance with chapter 176 of title 28,"; and

(3) by adding at the end thereof "The United States may elect at its discretion to use any

remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case."; and

(c) This section shall take effect on the date of the taking effect of such section 3613.

SEC. 224. Section 3663(f)(4) of title 18, United States Code, is amended as follows:

(a) by deleting "." at the end thereof; and

(b) by adding at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 225. Section 524 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d)(1) There shall be established in the United States Treasury a special fund to be known as the Department of Justice Debt Collection Fund (hereinafter in this subsection referred to as 'fund') which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the purposes set forth herein.

"(2) There shall be deposited in the fund 5 per centum of all net amounts realized from the debts collected by the divisions of the Department of Justice and all United States attorney's offices. Deposits to the fund shall begin October 1, 1988, from all amounts collected on and after that date.

"(3) The fund may be used for the following purposes of the Department of Justice:

"(A) the training of personnel of the Department of Justice in debt collection;

"(B) service pertinent to debt collection, such as title searches, debtor skiptracing, asset searches, credit reports and other investigation related to locating debtors and their property; and

"(C) expenses of costs of sales of property not covered by the sale proceeds, such as auctioneers' fees and expenses, maintenance and protection of property and businesses, advertising and title search and surveying costs;

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

"(5) For fiscal years 1989, 1990, 1991, and 1992 there are authorized to be appropriated such sums as may be necessary for the purposes described in subsection (3). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated, shall be deposited in the general fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and be available in the next fiscal year.

"(6) For the purposes of these subsections, amounts from debt collection efforts of the Department of Justice shall include amounts realized from actions brought by or judgments enforced by Department of Justice personnel, including those in all United States attorneys' offices, whether civil or criminal, and whether involving tax or non-tax debts owed to the United States, except as deposit of such amounts into other special funds is required by law.".

SEC. 226. Section 550 of title 28, United States Code, is amended by striking out "assistants and messengers" and inserting in lieu thereof "assistants, messengers, and private process servers.".

SEC. 227. Section 1961 of title 28, United States Code, is amended by deleting subsection (c)(1) and substituting therefor the following:

"(c)(1) The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 228. Section 1962 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 229. Section 1963 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 230. Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following section:

"§ 2044. Payment of fine with bond money

"Upon motion of the United States attorney, the court shall order any money belonging to and deposited by the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution or penalty imposed upon the defendants. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing, except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This does not apply to any third party sureties.".

SEC. 231. Section 2410(c) of title 28, United States Code, is amended by adding at the end thereof the following:

"In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

SEC. 232. Section 2413 of title 28, United States Code, is repealed.

Senator HEFLIN. Our first witness is Mr. Arnold P. Jones, a senior associate director, General Government Division of the General Accounting Office, Washington, DC.

Mr. Jones, you have some people with you. Would you like to introduce them?

STATEMENT OF ARNOLD P. JONES, SENIOR ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, WASHINGTON, DC, ACCOMPANIED BY JOHN ANDERSON, GROUP DIRECTOR, AND JOHN NOTO, EVALUATOR

Mr. JONES. Mr. Chairman, Senator Thurmond, I am happy to be here. I would like to introduce to my immediate right Mr. John Anderson, who is my group director in charge of the work we do auditing Federal litigative activities; to my left is Mr. John Noto, the evaluator in charge of work we do in debt collection and financial management issues in the court system.

I am really very pleased to be here today to discuss our views on S. 1961. I have got a rather lengthy prepared statement, and I would like to submit that for the record in the interest of time, and give a more brief summary statement, Mr. Chairman.

Over the years, we have issued numerous reports identifying problems with the Federal Government's debt collection efforts. Included in our work were two recent reviews of the Justice Department's debt collection and litigation efforts. My testimony focuses on the problems we identified during these reviews and how the bill proposes to correct them. We also have some comments about another feature of the bill which is similar to a suggestion we had previously made in a report we had issued to Senator DeConcini.

Just by way of establishing a little bit of background, inasmuch as I am the first witness, as the Government's principal litigator, the Department of Justice is responsible for litigating and collecting delinquent loans, benefit overpayments, and civil monetary penalties referred by other Federal agencies and for collecting criminal and civil fines handed down by the U.S. courts. The 94 U.S. attorney offices and several Justice headquarters' divisions litigate and collect various debts, including fines and penalties for violations of environmental, banking, tax, antitrust and drug trafficking laws. However, the U.S. attorneys offices litigate the majority of delinquent debts referred by other Federal agencies and collect most of the delinquent debts, fines, and penalties for Justice.

Each U.S. attorney's office has a debt collection unit that is headed by an assistant U.S. attorney and may be staffed with a paralegal specialist and several collection clerks. Generally, these units prepare all the necessary paperwork to process small dollar debt cases, such as delinquent student loan payments and veterans overpayments. Other attorneys within the U.S. attorneys offices generally handle the more complex high-dollar debt cases dealing in, among other things, foreclosures and bankruptcies that require particular expertise and may involve extensive legal proceedings to identify and recover assets needed to collect the debt.

The Office of Management and Budget reported that as of September 30, 1987, Federal agencies had nontax delinquent debts of about $32 billion. The tax delinquent debt was about $52 billion. So

we are talking about more than $80 billion of delinquent debts owed to the Federal Government.

As of that date, OMB also reported that agencies had referred about 92,000 debt cases valued at about $8.5 billion to Justice for litigation and collection. These are delinquent debts, 8.5 billion dollars' worth.

In our 1986 and 1988 reports, we found that Justice faced several impediments in litigating and collecting those debts. Among the impediments were State laws impeding the collection and Federal bankruptcy laws delaying or preventing recovery of funds. We certainly felt that innovative uses could be made of private attorneys. We recognized the need that in some cases, it is very expensive to divert U.S. marshals to serving summonses, and we think that we can use private sector process servers to do this.

Getting on to S. 1961, which I certainly feel addresses many of the concerns that we have had, it would help reduce State and Federal law obstacles to Federal debt collection by establishing uniform judicial enforcement remedies and uniform property exemptions to ensure that Federal debtors can be treated equitably in Federal court actions. It also gives the Federal Government priority for unsecured claims in bankruptcy cases.

In addition, the bill would establish a debt collection fund where 5 percent of the moneys collected by Justice would be used for Justice's collection-related costs and expenses, which should be useful in reducing delinquent debts. And a model for this debt collection fund, gentlemen, is the asset seizure and forfeiture fund that has recently been used to provide for improved delivery of law enforcement services using the profits that criminals have gotten. So I think we have been getting good experience on using these funds to achieve Federal ends.

That, gentlemen—and, Senator Grassley, I am glad to see you are here now—concludes my statement, and I would be very pleased to answer any questions you may have of us.

Senator HEFLIN. Senator Grassley, do you have an opening statement that you would like to make?

Senator GRASSLEY. Yes, but I will put it in the record. Thank you.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

I am pleased to be an original co-sponsor of this legislation to improve the procedures by which the Federal Government can enforce collection of delinquent debts owed to the Government.

Most conservative estimates show about $68 billion in delinquent debt owed to the Federal Government. I believe it's high time we started to collect it, and I thank the chairman for scheduling these hearings to focus on the problem.

Under current law, debts owed the Federal Government must be collected under a patchwork quilt of State laws where the debtor is found. This system results in inequitable and inconsistent treatment of Federal debtors and impedes the effective recovery of debts owed to the Government.

These same Federal debtors, however, incur obligations under uniform Federal loan standards. Congress ought to ensure that all Federal debtors are treated uniformly with regard to their financial obligations.

This proposal creates a firm but fair system for the collection of federal judgments. It's not a scheme to oppress "deadbeats". Each of the provisions is based on existing law.

This proposal is a cooperative effort of all of our U.S. attorneys around the Nation. These are the individuals charged with conducting litigation to protect the Government. We ought to provide them with suitable tools to do the job.

Mr. Chairman, I look forward to the testimony and am hopeful of Judiciary Committee approval of the proposal.

Senator HEFLIN. Mr. Jones, GAO has produced a number of reports documenting the current difficulties that the Justice Department is facing in terms of debt collection. Is it true that your efforts show State laws to be a source of difficulty in efficient collection of Federal debts.

Mr. JONES. Mr. Chairman, that is quite correct. As a matter of fact, there are a couple of States—and we all know who they are, and I will not mention them unless you ask me to—which have garnishment laws—well, Texas, for one, that preclude the Federal Government from garnishing the wages of persons who owe debt.

We find variations across the country, as has been previously stated, which says that in some States, and I do believe the District of Columbia—a non-State, but it is pretty easy to get at wages. In others, you cannot.

Senator HEFLIN. Which of the tools provided to the Federal Government in this bill would be the most beneficial in terms of collecting money owed to the Federal Government?

Mr. JONES. John Anderson, why don't you answer that?

Mr. ANDERSON. I think that one of the most important ones would be the garnishment provisions. There are currently, I think, five States that do not allow garnishment. So that would be allowed under the bill. Of course, in the other 45 States, the extent of garnishment varies considerably. So I would say that would be the major improvement.

Senator HEFLIN. Do we have any exact numbers, figures, on the total debt that is owed the United States?

Mr. JONES. Mr. Chairman, I will answer that. We have figures on the amount of indebtedness that is owed, and those figures are fairly accurate.

We have no idea as to how much of that amount of debt is actually collectable. An example would be a convicted major drug trafficker who has had every asset seized and forfeited to the Government, and then on top of it, for reasons of judicial discretion, will have a significant criminal fine imposed. That criminal fine is part of this indebtedness that we are talking about. That probably cannot be collected.

We have farmers who borrowed money from FmHA. Their property has been foreclosed and sold, and there is a difference between the debt and the amount recovered. There is a very good likelihood that that debt will not be recovered.

I think it is very important from a management perspective to get a better fix on that amount of the indebtedness that bears a reasonable chance of being collected, and at that point, when the executive branch comes to the Congress with proposals for resources needed to more effectively and efficiently collect those debts, that it have a better fix on the actual target.

I think that is good, sound management.

Senator HEFLIN. Do you have an estimate as to the percentage of total debt that could be collected, in your judgment, by vigorous efforts, we will say over a 3-year period or some other period of time?

Mr. JONES. Mr. Chairman, I am sorry. I do not. Maybe one of my two colleagues does.

Mr. ANDERSON. No, I do not.

Mr. NOTO. No. We do not really have a way to get a handle on it.

Mr. JONES. We just have no way.

Senator HEFLIN. You have no way of estimating what percentage out there is collectable, whether it is 10 percent, 50 percent?

Mr. JONES. Mr. Chairman, we issued a report not long ago looking at a particular class of persons—major drug traffickers who had been targets of the Organized Crime Drug Enforcement Task Force efforts and looking at the fines levied and the likelihood of them being collected. I think in some cases there are no assets that these people have to pay the fines, and they have substantial prison sentences so they do not have a viable earnings future.

I think some of these things, we have aged, we have debts currently on the books that are significantly aged, 20 years. Again, I think we are trying to get our foot in the door to find out what that target really is and begin to more aggressively manage the collection efforts, in addition to getting the legal relief that S. 1961 provides.

Senator HEFLIN. Senator Thurmond, do you have some questions?

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Jones, in your prepared statement, you point out several impediments to litigating and collecting debts owed the Federal Government. Included among these impediments are the inconsistencies of State collection laws which hinder the Department of Justice.

What do you see as the short- and long-term effects of this legislation on the efforts to collect the tens of billions of dollars owed to the U.S. Government?

Mr. JONES. It is certainly my opinion, based on the work we have done, that should the provisions in the bill get passed into law it will make substantial improvements in the Federal Government's efforts to collect those debts that are collectable. Those impediments—and we have some examples, and I am sure subsequent witnesses will give examples—involve State laws against garnishment, and State real property and personal property exemptions that shelter the debt from being collected. The bill reduces these impediments. Specifically, with regard to debtor property it reduces sheltered amounts opening another $7,500 to make available to the Federal Government.

I think the bill, in making and improving the Federal Government's legal tools, will go a long way to collecting those debts that are collectable.

Senator THURMOND. I assume from what you say that you and your agency would strongly support this bill.

Mr. JONES. That is correct, Mr. Thurmond.

Senator THURMOND. That is all the questions I have. Thank you.

Senator HEFLIN. Senator Grassley?

Senator GRASSLEY. Thank you very much for your testimony. Of course, I got in on just the last part of it so I did not hear it all. I appreciate that you support the legislation, because I am a cosponsor of it.

I have relied on the General Accounting Office in the past for many very good surveys and studies, particularly with the Defense Department, and I appreciate your expertise.

I believe in your testimony that you identified other problems that the Justice Department has had with collecting debts, such as large case backlogs and recordkeeping problems and insufficiently trained staff. I think you even mention some other things.

My first question is whether or not you believe these problems to be as important as the difficulties proposed to be solved by S. 1961.

Mr. JONES. I think they are important. I think the major issues to be addressed by S. 1961 will go a long way. However, I think it is important to recognize that some of the moneys that will be used by this fund will be used to better train clerks and paralegals in the debt collection process. It will allow for the targeting of more resources. And I have to say that the Justice Department, in its 1989 budget request, has asked for some additional moneys to fund additional positions, I believe $2.9 million to fund 80 positions to be assigned to debt collection.

So these things all argue well for us being postured to collect these debts.

Senator GRASSLEY. Your testimony points out that the Department of Justice has hired more staff—and you just mentioned that—in the collection units and has made some other adjustments in priorities. Would you please give me your assessment of the Justice Department's progress overall in addressing these other problems?

Mr. JONES. I am going to let Mr. Noto answer that.

Senator GRASSLEY. And let me also ask: How? Not just your assessment and whether they have been addressing the problems, but how well have they addressed them?

Mr. NOTO. OK. In 1980, the Office of Management and Budget prepared a report on Federal debt collection efforts in general. One aspect of that report covered the Department of Justice. I am using that 1980 report as a baseline.

We took some of the findings in that report, and it dealt with poor recordkeeping, lack of adequate staff, lack of procedures, lack of policy, lack of oversight, and lack of management direction at the departmental level. In 1986, in our report on delinquent debts, we reported that we followed up on those findings, and in just about every instance, we found improvements. We found improvements in policies. We found improvements in staffing; they were increasing the staffing levels at U.S. attorneys offices. We found improvement in management direction at the Executive Office of U.S. attorneys.

So, in general, I think all those areas are being addressed and they have improved, but I think more can be done in those areas.

Senator GRASSLEY. Well, would you then in your final statement be saying that even if we do pass S. 1961, we are still going to have a substantial debt collection problem?

Mr. NOTO. I think so. Yes, sir.

Senator GRASSLEY. You also mentioned the new authorization of private attorneys to help the Government collect its debts. I understand that this is a new program, but could you estimate how much of the outstanding debts the Government might recover if we were to make this program nationwide?

Mr. JONES. Senator Grassley, I think right now, as I understand it, the contracts have just been let.

Mr. ANDERSON. They are about to be within the next 8 to 10 weeks, I think.

Mr. JONES. They are about to be let. Like good program managers, we want to look at the results of a pilot test of this tool. I think it is too soon to say.

Senator GRASSLEY. So we have not done enough already to project that nationwide?

Mr. JONES. Oh, no. We have no basis.

Senator GRASSLEY. What is being done here, then, is on a pilot project basis?

Mr. JONES. It is a pilot project. That is right.

Mr. ANDERSON. Yes, five districts.

Senator GRASSLEY. And is that by subject matter or geographically, by geographical region I mean?

Mr. NOTO. Within five U.S. attorneys offices, within that jurisdiction.

Senator GRASSLEY. OK. But across the board of Government programs?

Mr. NOTO. No. As I understand it right now, the private attorneys' debt collection efforts will be on what the Department of Justice calls consumer and commercial types of debts. That would be educational student loans, Small Business Administration defaulted loans, primarily.

Senator GRASSLEY. OK. This will be my last question, Mr. Chairman.

Going back to the same point, I guess my original question went to the applicability of the pilot programs nationwide. You say you do not have enough records. Do you have a feeling that this program is going to be a very beneficial program, or is it too early to even make that estimate in the areas where it is going to be performed?

Mr. JONES. I know we are on record as supporting the concept. I think it will be beneficial, and I think it is just a fait accompli. But we really should get the results of the pilot study before we embark on a massive, nationwide program. But I think it is going to prove successful, Senator Grassley.

Mr. ANDERSON. I might add, Senator, that GAO has a requirement under the law to look at that program and to report to Congress on how effective it is after the pilot program has been run.

Senator HEFLIN. Thank you. We appreciate your testimony. We may have some written questions that could be submitted. If so, we would appreciate your prompt response.

[The prepared statement of Mr. Jones follows:]

IMPEDIMENTS TO THE JUSTICE DEPARTMENT'S EFFORTS TO LITIGATE AND COLLECT DEBTS OWED THE FEDERAL GOVERNMENT

SUMMARY STATEMENT
ARNOLD P. JONES
SENIOR ASSOCIATE DIRECTOR
U.S. GENERAL ACCOUNTING OFFICE

In 1986 and 1988 reports, GAO found that the Department of Justice faced several impediments in litigating and collecting debts owed the federal government, such as delinquent loans, benefit overpayments, fines, and penalties. These impediments included the following:

-- Agency referral packages sometimes lacked the information Justice needed to litigate and collect the claims.

-- U.S. attorneys offices lacked sufficient staff or enough trained staff to aggressively follow up and enforce collections.

-- Case backlogs were large, recordkeeping on case status and disposition was poor, and management oversight was lacking.

-- Some state laws impeded the collection of debts and federal bankruptcy laws delayed or prevented the recovery of money owed the government.

Congress enacted laws in 1986 and Justice has taken other actions to improve debt litigation and collection. Legislation (S. 1961) has been proposed to reduce state law obstacles which should help the government recover funds owed. The bill also proposes to amend federal bankruptcy laws to give the government a better chance of recovering funds from federal debtors who file for bankruptcy. In addition, the proposal contains a provision regarding debt collection funding incentives that should be useful in helping reduce delinquent debts owed the federal government.

* * *

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the proposed Federal Debt Collection Procedures Act of 1988 (S. 1961), a bill that should facilitate the federal government's ability to litigate and collect delinquent debts owed the federal government. Over the years we have issued numerous reports identifying problems with the federal government's debt collection efforts. Included in our work were two recent reviews of Justice's debt litigation and collection efforts. Our testimony focuses on the problems we identified during these reviews and how the bill proposes to

correct them. We also have some comments about another feature of the bill which is similar to a suggestion we previously made.

BACKGROUND

As the government's principal litigator, Justice is responsible for litigating and collecting delinquent loans, benefit overpayments, and civil monetary penalties referred by other federal agencies and for collecting criminal and civil fines handed down by the U.S. Courts. The 94 U.S. attorneys offices and several Justice headquarter's divisions litigate and collect various debts including fines and penalties for violations of environmental, banking, tax, antitrust, and drug trafficking laws. However, the U.S. attorneys offices litigate the majority of delinquent debts referred by other federal agencies and collect most of the delinquent debts, fines, and penalties for Justice.

Each U.S. attorney's office has a debt collection unit that is headed by an assistant U.S. attorney and may be staffed with a paralegal specialist and several collection clerks. Generally, these units prepare all the necessary paperwork to process small dollar debt cases, such as delinquent student loan payments and veterans overpayments. Other attorneys within the U.S. attorneys offices generally handle more complex high-dollar debt cases dealing in, among other things, foreclosures and bankruptcies that require particular expertise and may involve extensive legal proceedings to identify and recover assets needed to collect the debt.

The Office of Management and Budget (OMB) reported that as of September 30, 1987, federal agencies had nontax delinquent debts of about $32 billion. As of that date, OMB also reported that agencies had referred about 92,000 debt cases valued at about $8.5 billion to Justice for litigation and collection.

Generally, S. 1961 would help reduce state and federal law obstacles to federal debt collection by (1) establishing uniform judicial enforcement remedies and uniform property exemptions to ensure that federal debtors can be treated equitably in federal court actions, and (2) giving the federal government priority for unsecured claims in bankruptcy cases. In addition, the bill would establish a debt collection fund where 5 percent of the monies collected by Justice would be used for Justice's collection-related costs and expenses.

RECENT GAO WORK CONCERNING JUSTICE'S DEBT COLLECTION EFFORTS

On October 15, 1986, we issued a report to Representative John R. Kasich entitled Justice Department: Impediments Faced in Litigating and Collecting Debts Owed the Government (GAO/GGD-87-7BR). On January 7, 1988, we issued a report to Senator Alfonse D'Amato entitled Justice Department: Litigation and Collection of Civil Fines and Penalties (GAO/GGD-88-23FS). For these reports, we visited a total of seven U.S. attorneys offices and visited various Justice headquarter's offices that are responsible for the litigation, collection, accounting, and oversight of debts. We interviewed officials at these offices and reviewed judgmental samples of cases to determine the problems Justice was experiencing in litigation and collection. For our 1986 report, we also reviewed internal evaluations conducted by U.S. attorney office officials during fiscal year 1985. These studies evaluated the operations and management of the debt collection units of 35 U.S. attorney offices.

In both reviews, we found that Justice faced a number of impediments in litigating and collecting debts owed the government and that various actions had been taken or were being considered that could improve the debt collection process.

REVIEW RESULTS

Both of our reviews showed that although Justice had made progress to improve its debt litigation and collection performance, its ability to collect a large part of the debts was affected by the nature of the debts and the ability of the debtors to pay their obligations. For example, many cases involved bankruptcy matters where collections may not have been possible. We also found that Justice was experiencing other problems which affected the timely litigation and collection of debts. The problems included the following:

-- Agency referral packages sometimes lacked the information Justice needed to litigate and collect the claims.

-- U.S. attorneys offices lacked sufficient staff or enough trained staff to aggressively follow up and enforce collections.

-- Case backlogs were large, recordkeeping on case status and disposition was poor, and management oversight was lacking.

We also found that some state laws impeded the recovery of money owed the government. Following are some state law impediments that our work identified that S. 1961 would help correct.

In the northern district of Texas the debt collection unit was able to recover only 2.8 percent of the $5.5 million in debts referred to it by the Department of Education and the Veterans Administration. U.S. attorney office officials said that a major reason for this low recovery rate was Texas state laws that limit their ability to enforce collections. For example, officials said that in Texas debtor wages cannot be garnished; a single debtor's property valued at $15,000 or less is exempt from attachment; and homestead laws generally prevent the forced sale of residential property.

The proposed legislation would enhance debt collection by providing standard procedures for wage and property garnishments for federal debtors and substitute for state law provisions in federal court actions. According to Justice officials, wage garnishments would be in accordance with the provisions outlined in the Federal Consumer Credit Protection Act of 1968 (15 U.S.C. 1672 & 1673). Under these provisions, Justice could garnish up to 25 percent of a debtor's weekly disposable earnings. S. 1961 would also deal with the property exemption problem by allowing a "homestead" exemption of $7,500 for real or personal property. With a lower exemption, the government could reach more assets for collection in Texas.

We also found that some state laws cause the U.S. attorneys additional work in collecting debts. For example, in Illinois the assistant U.S. attorney in charge of debt collection told us that to obtain an Illinois wage garnishment, a wage deduction summons must be personally served on the employer, and the garnishment must be renewed and served every 8 weeks. A similar process in Ohio made it difficult for the debt collection unit to enforce collections. At this unit, 742 out of 1,725 cases (43 percent) had court judgments that had not been enforced by the unit.

The proposed legislation would help streamline debt collection operations by allowing for service of a garnishment order by first-class mail. The bill would also allow the original garnishment to remain in effect until the debt has been paid or other actions taken. As a result, the amount of follow-up and paperwork needed to continually enforce the judgment could be reduced.

In New York, the attorney in charge of a debt collection unit said that because New York state statutes have detailed requirements for identifying real property and recording liens, it takes several weeks before the government's interest can be protected by recording a lien in the court for the county where

the property is located. According to a Justice official, in the interim, the property may be sold or transferred which could prevent the government from reaching it. The proposed legislation allows a lien to be recorded upon a debtor's real property by the U.S. attorney simply filing a copy of a federal court judgment in one office within the state where the property is located.

Justice's internal evaluations of 35 U.S. attorney offices disclosed that state statutes hampered 13 debt collection units (37 percent) by either precluding them from enforcing collections on court judgments or creating additional work for the units to recover the debts.

We also found that the federal bankruptcy laws have delayed the recovery of money owed the government and in other cases involving bankruptcy matters, collections may not be possible unless the government has a secured interest in the property. The proposed legislation re-establishes a priority in bankruptcy cases for certain types of unsecured claims of the United States and should increase the likelihood of recovering funds from debtors who file for bankruptcy.

ACTIONS TAKEN AND UNDERWAY TO IMPROVE DEBT COLLECTIONS

Justice has taken several actions to improve its debt collection program. These actions include, among other things, adding staff to debt collection units and developing training programs on debt collection techniques for U.S. attorney office and referring agency personnel. Justice's fiscal year 1989 budget request includes an additional 80 positions and about $2.9 million for U.S. attorneys to address the serious backlog of civil debts and criminal fines. It also includes $10 million to establish a debt collection fund to be used for training debt collection staff and enhancing other debt collection efforts.

In 1986, Congress enacted legislation to help improve debt enforcement and collection. The Program Fraud Civil Remedies Act (Public Law 99-509 dated Oct. 21, 1986), among other things, authorizes agencies to administratively handle small fraud cases ($150,000 or less) before an agency hearing examiner. One reason Congress passed this law was because U.S. attorneys offices were not acting on many of these cases due to cost/benefit considerations and limited resources.

In 1986, Congress passed the Debt Collection Amendments (Public Law 99-578 dated Oct. 28, 1986), which authorized the Attorney General to use private lawyers on a test basis to collect debts. As of April 6, 1988, Justice was in the process of contracting with law firms to run the program in five districts--eastern New York, southern Florida, southern Texas, eastern Michigan, and central California. These districts were selected because of their large backlogs of debt cases and insufficient resources to devote to collection litigation. The law requires us to review various aspects of this program once it is underway.

DEBT COLLECTION FUND

We also support the concept behind the bill's proposal (section 225) to establish a fund to pay for the training of Justice staff in debt collection and related functions. The fund would be financed from 5 percent of the proceeds of Justice's debt collections. GAO has previously suggested that similar funding incentives be used to help improve the federal government's debt collection efforts.[1]

This concludes my prepared statement. I would be pleased to answer questions.

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[1]Debt Collection: Billions Are Owed While Collection and Accounting Problems Are Unresolved (GAO/AFMD-86-39, May 23, 1986).

Senator HEFLIN. Our next panel is the Honorable Joseph R. Wright, Deputy Director, Office of Management and Budget; and Hon. Richard Kusserow, who is Inspector General, Department of Health and Human Services here in Washington.

If you will, all your prepared testimony will be submitted for the record, and we would appreciate if you would summarize in about 5 minutes, each of you.

Mr. Wright?

STATEMENTS OF PANEL CONSISTING OF HON. JOSEPH R. WRIGHT, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC, AND HON. RICHARD KUSSEROW, INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

STATEMENT OF JOSEPH R. WRIGHT

Mr. WRIGHT. Thank you, Mr. Chairman. I will not really even take 5 minutes. I will submit ny testimony for the record.

I would just like to highlight a few points; that is, that we spent a great deal of pages in this testimony trying to lay out the Credit Management Program that has been implemented over the last 5 or 6 years, after we got much of the legislation in 1982 that authorized many of the steps that we could take.

Last year, on prescreening of the loans, we did go out for 2 million prescreened credit reports from the private sector. All the applicants for loans programs and many of the other programs right now, when they are applying, do have to state whether or not they are delinquent on any Federal debt to the Federal Government. They then have to try and straighten out the problems that they have got with whatever agency that they do owe the money to. This eliminates, Mr. Chairman, for all practical purposes, that case of 4 or 5 years where somebody went on ahead and took out four loans in a period of a year, a year and a half, and defaulted on all four against the Federal Government, simply because of the fact that our agencies were not able to go and communicate with each other as to what the delinquent status was.

In June of this year, we are going to have all new Federal employees, when they come in for employment, state whether or not they are delinquent on any loans. And before they get employment, they are going to have to straighten out their past-due debts.

Also what we have done is to report 2 million bad debtors who had defaulted on us or were seriously delinquent to the private sector credit agencies for $82 billion worth last year. As you know, one of the biggest incentives for paying your debts is making sure that your credit rating is maintained. So now the Federal Government is participating in good credit management like that, just like the private sector.

Our income tax offset program is working. In the last 2 years, we offset a million accounts for over $500 million. Now, those will continue to be offset until the debts are paid; this is the refunds. We have got a problem, Mr. Chairman. We only have a 6-month extension on that program. That is going to be exhausted in terms of our legislative authority this summer, and so, therefore, we are going to need legislative help. It is a successful program and should be continued.

Also, we have identified the Federal employees who owe debt. We picked up 67,000 matches on our first pass. We have got over half of them who have already voluntarily paid their debts or are making arrangements. Unfortunately, we have had to garnishee the wages of about 5,000 Federal employees, 15 percent of their paychecks per pay period.

We are expanding that to the Postal Service this summer, and we notified the leadership of both Houses that we would be expanding it to the legislative and the judicial branches also this summer.

We sold three loans last year for a net proceed in cash of $3.1 billion. The value there is very simple; that is, we use outside private financial advisers on each one of these major portfolios to give our agency managers the expertise that they have got, when they have a bottom line facing them, on how to collect debt. With those agencies, we are making the management improvements that resulted from their audits prior to the sale of those portfolios.

In general, I would say, Mr. Chairman, that we think that S. 1961 is a good bill. It will assist the Department of Justice on their active credit program. You will see next month them coming out with their program nationwide, not only using the private attorneys, but also their accelerated program on impoundments and trying to get some of those assets to offset the bad debts that are being paid. You saw in my testimony they have got a caseload of over about 90,000 of these cases. And we will be publicizing the 10 worst deadbeats of the Nation every single month.

So I think overall, if you take a look at the program, you have got an effort by the executive branch to follow up on the legislative mandate from 1982 and since then to come up with a very effective credit management program that we think is finally going to be working the way I believe that Congress had intended.

Thank you, sir.

[The prepared statement of Mr. Wright and a response to a followup question follow:]

STATEMENT

of

JOSEPH R. WRIGHT, JR.

OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss Senate bill 1961, the Federal Debt Collection Procedures Act as proposed by the Department of Justice. I will discuss the importance of this bill in supporting the Administration's Comprehensive Credit Management Program.

Justice Supports Debt Collection

At the outset, I wish to compliment the Attorney General and the U.S. Attorneys for their efforts in supporting debt collection. Through March of this year, Justice has already collected $210 million in delinquent debts, fines, and penalties. This brings the amount collected in cash to $2.2 billion since 1982. This is a great record and a tribute to the hard work of many people in the U.S. Attorneys' offices and Justice headquarters.

The Attorney General has provided consistent leadership in debt collection -- imaginative and productive initiatives such as obtaining authority to use private attorneys for debt collection, seizing assets of delinquent debtors through Operation Deadbeat, introducing the use of credit cards for the payment of debts, and, of course, the bill we are discussing today.

I am a particularly strong advocate of Operation Deadbeat. Operation Deadbeat is a high profile effort to seize assets of delinquent debtors and to publicize these efforts as a warning to others that they could face similar actions. Initiated in November 1987, 28 of the 93 U.S. Attorney offices now have an Operation Deadbeat program. In a companion effort, Justice has identified the "Top 10" civil debtors who owe judgment debts of $100,000 or more. Debtors owing lesser amounts, but whose publicity might encourage others to repay in order to avoid a similar indignity, will also be included on the "Top 10" list. The list will be updated monthly. There will be a major press conference in May to announce the initial list and the status of other important credit management initiatives.

Managing Federal Credit Program

The policy for Federal credit management and debt collection is firmly in place. The priorities and manner of collecting debts and preventing delinquencies were established by the Office of Management and Budget and detailed in the report to Congress: "Management of the United States Government, 1989." Our significant accomplishments to date are as follows:

- The major Federal loan-making agencies (USDA, Education, HUD, SBA, and VA) now have a comprehensive credit management program in place that is based on sound financial decision-making and common sense.

- Before a loan is made:

  -- Creditworthiness of an applicant is determined utilizing credit reports from the private sector. Some 2 million credit reports were obtained in 1987.

-- Applicants for discretionary program benefits must indicate on their application forms whether they are delinquent on a Federal debt. If a Federal delinquency is indicated on a loan application or reflected in a credit report, no further action on the application will be taken until the debtor provides evidence of repayment or other resolution by the creditor agency.

o After a loan is made:

-- Strict requirements have been established for official files to assure that loan documentation is complete.

-- Timely billing practices are being implemented, and agencies are automating their servicing and collection functions -- such as SBA's automated Delinquent Loan Collection System and VA's automated Central Accounts Receivable System (CARS). Where it is cost-effective, agencies are contracting with the private sector for billing, collection, and accounting services. Two examples are Education's direct student loan portfolios, which are serviced, collected, and tracked through an automated system operated by a private contractor, and HUD, which has contracted with private firms for automated account servicing systems.

o Loans have been sold to the public:

-- In 1987, loans with a face value of $7.9 billion were prepaid or sold to the public, yielding $5.6 billion in gross proceeds. Of this total, $3.1 billion resulted from three successful public sales of USDA and Department of Education loans. In 1988, the pilot asset sale efforts will continue with sales by five Federal agencies. A more comprehensive sales program in 1988 was precluded by statutory sales impediments for SBA and FmHA (RHIF loans). The assistance of Congress in avoiding such impediments is needed to further strengthen our credit management program.

-- Agencies involved in the 1987 loan asset sales improved their credit management practices as a result of the sales experience. The preparation of the loan portfolios for sale required agencies to address the adequacy of their management practices and accounting systems when compared with private sector standards. For example, the Department of Education loan documentation procedures and delinquency reporting practices are now modeled on private sector practices. Similar improvements in loan documentation are occurring at USDA. Without the experience gained from the loan asset sales programs, these improvements would not have taken place. Agencies are now required to provide a report after each loan asset sale in order to ensure that the experience gained is put into place.

o When a debt becomes delinquent, the full force of the Federal presence is now behind collection efforts. The collection of $32 billion in delinquent non-tax debt is being attacked by:

-- Commercial and consumer delinquent debtors are reported to credit bureaus. Two million current and delinquent accounts valued at $82 billion are being reported;

-- Individual income tax refunds of delinquent debtors are being offset. Over a million accounts were offset (or

voluntarily repaid under threat of offset) for $523 million in 1986 and 1987. An additional 332,739 accounts have been offset for $162 million to date in 1988. The authority for this successful collection tool will expire on June 30, 1988, unless Congress takes action now. We earnestly seek this Committee's help in securing an extension through an appropriate legislative vehicle. Currently, extension authority is contained only in the House-passed version of welfare reform.

-- Because of Operation Deadbeat, the routine seizure of cars and other assets by the Justice Department for nonpayment of debt has raised the ante on delinquent debtors who have the ability to pay, but continue to ignore their obligations.

-- Delinquent Federal employees are repaying their debt. Of 67,000 Federal employees owing debt totalling $132 million, almost half (30,000) are now paying voluntarily. We have been forced to offset up to 15 percent of the net pay of another 5,000 employees. The balance of the accounts should be resolved by the end of May. New matches will be continued annually. I have written to the Congressional leadership and Judicial branch inviting them to participate in future matches. Your support for Congressional participation in the program to ensure the financial integrity of all Federal employees is vital.

-- Beginning in June, prospective Federal employees will have to provide information on the Standard Form 171 as to whether they are delinquent on Federal debt. The existence of a delinquent Federal debt is not an automatic ban to employment. However, the delinquency will become a factor in the consideration for employment and applicants will be encouraged to resolve delinquent debts. Applicants who do not resolve their delinquency and who are hired for Federal employment will be entered into the salary offset program.

-- In addition to the existing procurement debarment and suspension list, we are establishing a similar list for debarred and suspended participants in grant and loan programs. This will deny further loans or grants to those who have been debarred because of previously defaulting or defrauding the Government.

-- The $51 billion in overdue taxes owed to the Internal Revenue Service are being collected through the agency's own array of legal authorities and collection systems.

Role of Private Sector - Private Collection Agencies

We have actively engaged the private sector in the debt collection program through the use of collection agencies.

This approach is based on a two-year pilot using contractors for non-tax debt collection. Unfortunately, the initial four contractors were able to collect only $20 million. (Exclusive of Education, which has referred $2.4 billion to a private collection agency since 1982, collecting over $180 million.) We were not able to take full advantage of the private sector resources and expertise. In order to take advantage of the full range of service offered by private collection agencies, we incorporated significant improvements in the six new contracts

that GSA awarded December 1, 1987. The contract provides a stronger oversight role by the General Services Administration and Treasury to ensure more diligence on the part of agencies and contractors. The new contracts:

-- Build in competition by requiring collection agencies to refer uncollectible accounts to a second contractor after six months;

-- Include more detailed collection performance standards for contractors;

-- Expand reporting requirements to measure performance of both the contractors and the agencies;

-- Augment agencies' debt collection functions to perform routine billing and collection without costly in-house systems;

-- Provide lease of off-the-shelf automated collection systems.

As a result of this contract approach, agencies can move rapidly to upgrade their debt collection activities without hiring full-time staff or buying into costly large scale systems upgrades.

OMB has established performance goals for six agencies to place a minimum of $1.9 billion in delinquent debt with private collection agencies this year.

Education	- $600 million
SBA	- $500 million
VA	- $300 million
Commerce	- $436 million
HUD	- $ 62 million
HHS	- $ 32 million

We are precluded by statute from referring FmHA accounts. This impediment should be removed. We would ask your assistance to obtain its removal.

Justice Litigation - Key to A Successful Collection Strategy

The Department of Justice, through the 93 U.S. Attorneys, and other Federal agencies bring suit and enforce post-judgment collections. A successful collection strategy must include the ability to enforce collection through the court system. The threat of a suit must be a reality. A debtor must know that failure to pay will result in litigation, judgment, and collection.

There were 92,146 cases valued at $8.5 billion pending at Justice as of September 30, 1987. Over the past few years, the caseload has remained above 90,000 -- going as high as 116,000 cases in 1985. A more interesting statistic is that the value of the pending cases has almost doubled from $4.6 billion in 1985 to $8.5 billion today. A number of these cases have been there a long time. Debt collection may not be as high a priority when a U.S. Attorney must also face increased case loads due to drug offenses, white collar crimes, and a large criminal docket.

To assure that resources are available, we support the provision in S. 1961 that allows Justice to retain 5 percent of the funds collected to pay certain litigation costs such as maintaining seized property or paying for debtor tracking

services. Additional personnel cannot be paid from this fund, only associated costs.

We have set some ambitious 1988 management goals for Justice to reduce and eliminate the backlog of unlitigated cases and uncollected judgment cases. Within the next six months:

-- This May, Justice will begin referring nearly 9,000 non-tax debt collection cases to private law firms. These firms, competitively selected, are in Detroit, Houston, Brooklyn, Miami, and Los Angeles. These five districts were selected mainly because they had large backlogs of debt collection cases and limited resources to devote to collection litigation. Five additional Districts will be operational later in the year to complete the program for the three-year pilot effort. We believe this pilot will be successful, and that the private attorney authority should be made permanent and available to all 93 U.S. Attorneys.

-- A backlog of 26,000 cases that have been at Justice for five or more years will be reduced by securing a judgment or returning the case to the client agencies by September 30, 1988.

-- A department standard has been established for routine debt collection cases referred to U.S. Attorney offices. They will be acted upon within 30 days of receipt.

-- Every eligible judgment collection case on which Justice has adequate data has been referred to the Income Tax Refund Offset Program; 23,523 accounts valued at $195 million, were referred for 1988 program with collections to date of $3.4 million through April 1st.

The Department of Agriculture and Justice have launched a joint program to reduce the backlog of Agriculture cases that represent one-third of the cases and 66 percent of the dollars pending at Justice.

-- The departments have agreed to a plan for litigation of debt collection, foreclosure, and bankruptcy cases referred to U.S. Attorneys by Farmers Home Administration, Agriculture Stabilization and Conservation Service, Commodity Credit Corporation, Federal Crop Insurance.

-- Western District of Oklahoma -- a pilot project will utilize staff resources of both departments to develop procedures to eliminate the backlog in that district and make procedures applicable to similar backlogged districts.

-- Western District of Kentucky has pilot agreement with FmHA to use their contract investigators to perform asset and income analysis on pending cases to accelerate collections.

-- Among the five additional districts to be designated to be part of the Private Attorney Pilot Program -- I would expect that two to three districts will be selected that have significant backlog of agricultural cases.

In a separate action, the PCIE will be working with U.S. Attorneys to provide Inspector General staff resources. I.G.

investigations can expedite bringing suit of debt collection cases, and, also can assist in locating assets for seizures to enforce judgments. Mr. Kusserow is here to answer questions on this effort.

Need for the Proposed Bill

Over the last several years, cooperation between Congress and the Administration has led to important legislation that has already resulted in significant improvement in the management of the Government's financial activities. Examples include the Deficit Reduction Act, the Debt Collection Act, the Federal Managers' Financial Integrity Act, the Prompt Payment Act, and the Single Audit Act.

Additional legislation is needed to further strengthen the Federal Credit Management Program. Two specific authorities that, with your assistance, we need to enact this year are: (1) extension of the Income Tax Refund Offset; and (2) Credit Reform, which is necessary in order to measure and properly budget for Federal credit programs. I would also encourage the Congress to avoid legislative impediments to the loan asset sales program, such as the current constraints for the Small Business Administration and Farmers Home Administration. I hope you agree that the statutory prohibition against the use of private collection specialists at Farmers Home should also be removed.

Enactment of S. 1961 would be a major contribution to the Administration's comprehensive Credit Management Program. The Federal Debt Collection Procedures Act will provide the necessary legal enforcement tools to assist the Federal Government in its efforts to recover the delinquent debt owed. This bill has the support of all 93 U.S. Attorneys.

The bill will greatly strengthen our collection enforcement. The absence of a Federal debt procedure statute means that at the front end of the credit cycle the Federal Government does not know in advance what judicial remedies will be available in the event of a default by a Federal borrower.

The proposed Federal Debt Collection Procedures Act allows for the creation of standard forms, policies, and procedures for the handling of Federal debt collection litigation and enforcement. Its main components are that it:

-- Allows nationwide enforcement of Federal money judgments;

-- Provides assessment of charges on a claim so that the Government can pass the administrative costs of litigation and enforced collection on to the debtor; and

-- Provides for a Federal scheme of remedies at each stage in the litigation process: prejudgment, judgment, and post-judgment.

The provisions of the proposed Act are based on existing State statutes and give careful consideration to due process concerns.

Private sector lenders often stipulate what law will apply in the event of a default by the borrower. The Federal Government cannot deal with its borrowers in such a fashion.

As the Justice witnesses will point out - the present system for collection of Federal debts is inherently unfair. Borrowers

compete for Federal monies under uniform Federal requirements but leaves them obligated to pay those debts based upon the law of the State in which they choose to locate. Those who reside in States with strong debt collection statutes such as Arizona and Alabama bear a disproportionate amount of the burden, compared to debtors residing in States with weak debt collection laws, such as Texas and Florida. Too often, debtors can ignore Federal debts with impunity.

Federalism Policy not Undermined

Collection of delinquent debt owed to the Federal Government is clearly a problem of national scope. The variations in State laws create a problem with the effective exercise of Federal financial stewardship under the various Federal statutes and programs in which debt is created. Absent Federal legislation establishing a separate and distinct means of collecting Federal debt, there is no means for States to coordinate the variations in State law. The bill does not disturb State sovereignty nor dilute the States' primary responsibility for the resolution of private and non-Federal debt.

Conclusion

This bill provides the necessary tools for the Federal Government to prudently manage its fiscal affairs. The Federal Government has an obligation to our taxpayers to see that programs are properly and responsibly administered. That includes: (1) taking action to re-coup debts owed to the Government; (2) doing so in a manner that is evenhanded and equitable to all; and, (3) doing so in a manner that reaches all who have misspent or owe money, not permitting some to escape to States that are in a manner of speaking "bad debt havens."

This concludes my statement. I'll take any questions you have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 14 1988

Honorable Howell Heflin
Chairman
Subcommittee on Courts and
Administrative Practice
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to previous correspondence regarding a follow-up question to testimony presented by Joseph R. Wright, Jr., as Deputy Director of the Office of Management and Budget, on S. 1961 the Federal Debt Collection Act.

Enclosed is our reply to the question submitted by Senator Thurmond.

I would be happy to provide additional information, if necessary.

Sincerely,

Thomas P. Stack
Chief, Credit and Cash
Management Branch

Enclosures (2)

* * *

Q. Mr. Wright, in your prepared statement you mention the Private Attorney Pilot Program as a means to increase the amount of delinquent debt collected. Could you briefly discuss just how effective this program has been, and if you would like to see this program expanded?

A. The Private Attorney Pilot Program is authorized by the Federal Debt Recovery Act for a three-year demonstration that expires on September 1, 1990.

Because of some delays caused by the protest of bidders, the first cases were not placed with the private law firms until October 11, 1988. Attached for your information is a Department of Justice Status Report.

Although it is too early to measure performance of the pilot, our expectations are high that this will be a successful initiative. U.S. Attorneys are overburdened by their heavy criminal and civil litigation caseload. They are reluctant to devote additional resources to debt collection cases. There are 92,000 cases valued at $8.2 billion in the Justice inventory. Already, some 13,000 cases were turned over to the private law firms. Their use of private law firms will free the U.S. Attorneys to pursue their criminal case docket while ensuring that debt collection can be continued as well. We would expect the Department to request an expanded program.

PRIVATE COUNSEL PILOT PROGRAM

BACKGROUND

- The Federal Debt Recovery Act (FDRA) was enacted as part of this Administration's comprehensive program to improve the Federal Government's credit management and as one of its privatization initiatives.

- The pilot program required by the FDRA enlists the aid of private counsel in pursuing debtors who are estimated by the Office of Management and Budget (OMB) to owe the Federal Government some $32 billion in non-tax delinquent debts.

- The FDRA empowers the Attorney General to:

  - Conduct competitive procurements and enter into contracts with at least four private law firms in five to ten judicial districts as a pilot program to evaluate whether enhancing the Government's debt collection resources with private counsel will increase Federal debt collection receipts.

  - Pay private counsel who win the debt collection contracts a percentage of what they collect as a fee.

- In addition, the FDRA requires the Attorney General to:

  - Submit a detailed annual report to the Congress on the results of the pilot program.

  - Use his "best efforts" to contract with some "small and disadvantaged" law firms to enable such firms to receive about 10% of the Federal Government's debt collection business.

- The three year life of the FDRA began sixty days after the Attorney General sent the Congress the regulations he promulgated pursuant to the Act on August 31, 1987. Therefore, the Act will expire on September 1, 1990.

STEPS TAKEN TO IMPLEMENT THE FDRA

- Selected the following five districts which have large backlogs of uncollected debts as the first pilot districts:

  Eastern District of New York (Brooklyn)
  Southern District of Florida (Miami)
  Eastern District of Michigan (Detroit)
  Southern District of Texas (Houston)
  Central District of California (Los Angeles)

- Conducted an extensive publicity campaign in five pilot districts to reach out to large and small firms and encourage widest possible participation.

- Result was over 1,000 requests from sole practitioners and small, medium, and large law firms of every description for copies of our Request for Proposals (RFP) so they could decide whether to bid for our contracts.

- Eighty-five (85) firms eventually bid on our debt collection contracts--more bids than the Department had ever received on any procurement--distributed as follows:

DISTRICT	BIDS RECEIVED FOR FOUR CONTRACTS
E.D.N.Y	20
S.D. FLA.	19
E.D. MICH.	16
S.D. TEX.	12
C.D. CALIF.	18
TOTAL	85

- Competitive procurement process took one year. Negotiations with firms in all five pilot districts finally completed and contracts awarded to 4 firms in each pilot district.

- The 20 firms submitted bids ranging from 10% to 38% as their fees for handling Federal debt collection litigation.

- In implementing the Attorney General's responsibility under the FDRA to "use his best efforts to enter into [debt collection] contracts . . . with law firms owned and controlled by socially and economically disadvantaged individuals . . . ," our outreach program and the competitive procurement process combined to ensure that we met the statute's objectives.

- Detroit selected as first district to get pilot program because U.S. Attorney--Roy C. "Joe" Hayes--is Chairman of the Debt Collection Subcommittee of Attorney General's Advisory Committee of U.S. Attorneys, and he has been exemplary in cooperating with Department personnel charged with implementing the pilot.

- The first debts sent to private counsel for collection were from a pool of backlogged cases in which the U.S. Attorneys' debt collection units had obtained judgments against the debtors but did not have the time and resources to pursue actively to enforce the judgments.

- After the initial backlog is distributed to private counsel, they will receive four out of every five pilot program civil debts referred to the pilot Districts for collection by the Department of Education, the Veterans Administration, the Small business Administration, the Department of Housing and Urban Development, or any other Federal agency with recalcitrant debtors who have refused to pay without being sued. The fifth debt referred, on a rotating basis in each pilot district, will go to the U.S. Attorney's Office for litigation.

- Therefore, the addition of four private counsel in each of the pilot districts gives the Government five law firms to sue debtors in each pilot district [4 private firms plus the U.S. Attorney] instead of the single firm [the U.S. Attorney] it had before.

- Selected the following second five pilot districts:

  District of New Jersey (Newark)
  District of Columbia (Washington, D.C.)
  Middle District of Georgia (Macon)
  Middle District of Florida (Tampa)
  Western District of Louisiana (Shreveport)

- Four of these districts--all except the District of Columbia--were selected primarily because they have large backlogs of foreclosures pending under the Rural Housing Program administered by the Farmers Home Administration

(FmHA) of the United States Department of Agriculture (USDA).

- Also, because first five pilot districts are all major metropolitan areas, we selected mostly smaller cities and rural areas for second five pilots to give the overall pilot project the broadest possible base.

OTHER RELEVANT GENERAL DATA

- The FDRA exempts debts arising under the Internal Revenue Code, the Social Security Act, and the tariff laws from those which can be sent to private counsel for litigation.

- An AUSA in each pilot district will monitor private counsels' debt collection litigation and be responsible for all fundamental decisions, including whether to initiate litigation and whether to compromise or settle a claim.

- Initially, we have determined not to send criminal fines or debts of over $25,000 to private counsel for litigation.

- As a compromise between those who argued for giving private counsel maximum flexibility in selecting the courts in which to sue Federal debtors and those who would restrict private counsel to suing only in Federal district courts, we decided to permit private counsel initially to sue on debts of up to $10,000 in local, state, or Federal courts at their option, but require all suits on debts over $10,000 to be brought in U.S. District Courts.

CENTRAL INTAKE FACILITY

- Under our present system, client agencies refer debts for litigation directly to the U.S. Attorney in whose district the debtor resides. In effect, we have debts coming to the Department through 94 different doors and we never have accurate and current data on the number of debts sent to us or their value. The Department's debt collection management people believe that replacing these 94 doors with a single door--a Central Intake Facility (CIF)--will solve many of our basic debt collection problems. OMB agrees, and together we decided to use the FDRA pilot program to also test the central intake concept.

- The CIF is not required by the FDRA, but it is essential if the Department is to be able to keep track of debts referred to private counsel and the U.S. Attorneys in the pilot districts and compile the statistics necessary to report to the Congress as the FDRA mandates.

- The CIF is run by a private contractor with appropriate computer capability. It automates the following functions, many of which we were not now able to accomplish in a timely manner, if at all, before it opened:

  - Receive debts sent by Federal agencies for enforced collection, via litigation by pilot district U.S. Attorneys and private counsel.

  - Screen all incoming debts to ensure they are suitable for litigation. (For example, that the statute of limitations has not run.)

  - Return defective cases to referring Federal agencies or acknowledge receipt of appropriate cases to the

referring agencies and let them know which of their cases are sent to the U.S. Attorneys and which to specified private counsel.

- Act as a central data bank of referred debts so we will, for the first time, know how many debts we have received from each agency and the value of such debts.

- Electronically transfer essential data on each debt to the pilot district U.S. Attorneys and the private counsel with whom we have contracts.

- Receive all payments collected by pilot district U.S. Attorneys and our private counsel contractors and deposit them daily into the appropriate accounts in the Treasury.

- Produce automatically all pleadings, letters, and other litigation documents required by the pilot district U.S. Attorneys and private contract counsel.

- Create automated reports to inform our client agencies monthly of the dollars collected on their cases and prepare periodic status reports on the progress of our cases for the Department and our client agencies.

- Compute monthly the amount of fees we are obligated to pay private counsel in the pilot districts on the basis of the amounts they collect and notify Treasury to send private counsel checks in the appropriate amounts.

- Compute automatically the data we need to reconcile our accounts with our client agencies, create the proper audit trails for the GAO audits the FDRA calls for, and prepare the reports the FDRA requires be submitted to the Congress.

o The CIF contractor will also install in each U.S. Attorney's and private counsel's office in the pilot districts the latest computer equipment and systems to enable us to evaluate new debt collection technology.

STATEMENT OF RICHARD KUSSEROW

Mr. KUSSEROW. Mr. Chairman, I think I will just reserve my time for questions.

Senator HEFLIN. Does the Office of Management and Budget have any idea on the amount of delinquent debt owed to the Federal Government that might be recovered if we devoted the necessary resources to the effort? In other words, since it is somewhat questionable as to the exact numbers, maybe it ought to be on the basis of what percentage of the debt out there, if necessary resources were to be devoted to it, what do you think is recoverable? What percentage?

Mr. WRIGHT. Mr. Chairman, I cannot tell you on a percent; I cannot tell you on a dollar basis. Let me explain.

Senator HEFLIN. Have you got any ballpark figure? You are bound to have some sort of ballpark figures. Do you think it is 50 percent, 25 percent, 75 percent?

Mr. WRIGHT. Oh, no. You are not going to be there. Let me break up the delinquent debt for you, if I may, a little bit.

Of the $83 billion in delinquent debt that is outstanding, $51 billion is due to the IRS. Now, I think some of that should probably be written off, but for the most of it, they are going to be able to get a good part of it.

Then you have got the other major components of the $32 billion in the nontax debt; about $12 billion of that is agriculture. Most of that is Farmers Home Administration.

The problem you have got there is you could put all the additional resources you want, but with the congressional prohibitions in terms of not being able to use outside collection agencies and not being able to foreclose, not being able to do a lot of things, you, in effect, are tying USDA's hands against being able to collect that debt no matter how many collectors you put on it internally. They simply do not have the tools that other agencies or private sector companies have.

Of that 11.8 I just mentioned that was delinquent, 7.8 is over a year old. Now, as you know, with collection agencies, once you get past that 1-year timeframe—and it may differ a little bit with farmers in terms of the housing programs and all the rest. Once you get past a year, that is a seriously delinquent loan.

The others you have got are the Department of Education. You have got $5.2 billion that is delinquent in that category. I believe about 60 percent of that is held by the GSL State agencies. So we do not have that paper yet.

So you could put Federal collection agents or you could go and put in private sector agents, but by the way the process works in terms of guaranteed student loans, we do not have it yet.

You take the maritime which increased on a couple of shifts that they had to go through; that will go down. On the rest of it, I would say I would be very surprised for every dollar that you put into a collection process—I would prefer to use private sector collection process. In terms of doing this, I believe they are better than we are. You certainly should be able to get $5 in return for it.

Now, the reason I am saying this is around what it would cost you in terms of a discount or an incentive fee to be able to pay

somebody to collect it. Many of our portfolios, despite the fact I think we have got a fairly good program right now, have not been aggressively collected over the years, and I think there is an opportunity there. But, again, I am just giving you a ballpark.

I do not believe, with the restrictions that USDA has on them, that it will work until those restrictions are legislatively taken off. I think it is a serious, serious problem.

Senator HEFLIN. Mr. Inspector General, are there specific problems that your department faces in trying to collect delinquent debts?

Mr. KUSSEROW. Yes, Mr. Chairman. I think that, first of all, we can speak collectively here as well, because as vice chairman of the PCI, I can report on all the activities of the inspectors general collectively.

On the investigative side of the house, we generate about $175 million in new receivables. Over the life of the council, it is roughly a cumulative of a billion dollars. And then on the audit side, on the audit receivables, we are annually adding about a billion dollars, a total of $11 billion during the council's life.

I think one of the things that we observed is that within our agency there are weaknesses that should be addressed. You are looking at a flooded system right now in Justice and trying to address that end of it. I think also there is a responsibility on the part of the agencies to do better front-end verification of individuals who are receiving Federal money so that you are better able to collect it later on, and also to have the kind of data elements you would need to make effective collection.

There is also a problem in the fact that we have a lack of uniformity and due diligence requirements for the Federal Government in various programs as to how you monitor portfolios or accounts receivable. It also extends to where we have Federal money being used through the agency of others, such as States or universities, where a failure of due diligence will always result in a higher delinquent rate.

I also think one of the major efforts of this administration has been trying to develop a standardized accounting system. One of the frustrations that we have in trying to answer your questions about how much is there out there, and how are we progressing against it, is the fact that it is very hard to get your hands around the numbers because the Federal Government does not have a standardized accounting system. Not only that, it is that there is no uniformity among agencies in terms of their accounts receivable.

For example, I have to confess that at HHS, in auditing the financial picture of Social Security this last year to produce the first financial statement that the Social Security Administration has ever generated, we found that, indeed, they did not have an accounts receivable. They had something that looked like it, but it was never set up to recover money. So, therefore, they had no ability to age the accounts receivable, as well as to charge interest.

So it seems to me one of the things that we really need in the Government is to have some sort of a certification by agency head that the accounts receivable are correct; that they can age; and that they do charge interest.

There is also the whole issue of incentives in trying to get people to pay back the money before they have to go to a judgment. One of the problems that we have is that oftentimes the Government is paying higher rates of interest to borrow money than we charge for people who owe us the money. There is an inconsistency in that.

Where it is not a situation where the program is attempting to subsidize individuals in their debts, then there should be some sort of a mechanism whereby there is an incentive for people to pay it back because they are paying high interest rates. And those interest rates should be kicked up when they become delinquent and kicked up again, as is proposed in this legislation, when a judgment is due.

So you have all the way along the line an incentive to pay back the money. Otherwise, why should you pay the Federal Government which has a lower interest rate than you pay your Mastercard bill, which has a much higher interest rate? So I think all the way along the line, incentives have to be built in so that we are not flooding the justice system and at the same time making it strong enough so that when justice does enter into it that they have the tools to collect the money.

Senator HEFLIN. Senator Grassley?

Senator GRASSLEY. I guess my questions are few, Mr. Kusserow.

I am interested in the department's pursuit of debt owed under the National Health Service Corps. I think we have a situation where many individuals who benefited from scholarships under this program have failed to perform their obligations to the Government in terms of taking employment in physician-shortaged areas.

Is that a major problem?

Mr. KUSSEROW. It had been a few years ago. We are beginning to get it under control. There are still some ironies in the program, which brings up a whole new set of issues.

We did find that there was not due diligence in that program, and as a result, we did have a lot of problem in paying back. So we had the irony, the ultimate irony, in my judgment, whereby you had health professionals who did not meet their obligation under the program and, therefore, owed money and were delinquent in paying the money back, billing Medicare and Medicaid for hundreds of thousands of dollars a year. And we could not offset that; we could not stop them from doing it.

But the one thing that we had that has allowed us to really begin to get on top of this issue is the fact that physicians do not like to be labeled as a deadbeat in their own community. We found that by publicizing the fact that this pillar of the community owed us money had a remarkable effect on the ability of them to suddenly pay back the money. So we are making great progress through the publicity routine.

Senator GRASSLEY. You know, most of these people are relatively high-income people, I would assume. You have had a problem, I think, with property being transferred to a spouse. Have you been able to get after that and collect that?

Mr. KUSSEROW. With difficulty. The whole collection process in these programs are the same as we have in the rest of the Government in that they are crippled by the fact that we do not have an

ability to aggressively pierce these veils that have been set up to disguise where the money is or who owns it. Also, for example, in NHSC scholarship program, the interest accrues at a 6-percent rate. If that physician has a choice of paying that 6-percent debt or paying a much higher debt, such as the mortgage on their house, what are they going to do? The one with the mortgage where they can deduct it from their income tax, or this lower rate which they can get more by depositing the money than they would be by paying the Federal Government?

Senator GRASSLEY. Are the obligations of the National Health Corps scholarship dischargeable in bankruptcy?

Mr. KUSSEROW. I would have to give that for the record.

Senator GRASSLEY. OK. That is OK.

[Mr. Kusserow's response, subsequently submitted for the record, follows:]

RESPONSE OF RICHARD KUSSEROW TO SENATOR GRASSLEY'S QUESTIONS

Debt resulting from breaching a service agreement with the National Health Service Corps may not be dischared through bankruptcy for 5 years after the debt is due unless this is unconscionable. This requirement, which is identical to that of the HEAL program, was enacted in the Public Health Service Amendments of 1987, P.L. 100-117, December 1, 1987. The provision covers retroactively any NHSC debt in existence on December 31, 1987.

Senator GRASSLEY. I guess maybe more importantly, if you cannot answer that, maybe we also need to have you follow on, then, with whether or not you feel S. 1961 would take care of that problem, if it is a problem?

Mr. KUSSEROW. Well, it would certainly go a long way to force people to address the fact that they owe the U.S. Government money. The one thing we have found is wherever we have had health professionals confronted publicly with a debt in a way that is embarrassing, somehow they do find a way to pay it back. Certainly a judgment by the U.S. Government through the courts, whether it is high penalties, it would certainly get their attention.

Senator GRASSLEY. Mr. Chairman, I am done.

Senator HEFLIN. Thank you. There may be written questions sent to you. We would appreciate a prompt response.

Senator GRASSLEY. Mr. Chairman, I will have questions for the U.S. attorneys panel and for the SBA that I would like to have given and answered in writing. I have to go.

Senator HEFLIN. Our next panel is the Honorable Frank W. Donaldson, U.S. attorney, northern district of Alabama; the Honorable Stephen M. McNamee, U.S. attorney of the district of Arizona; and Hon. Roy C. Hayes, U.S. attorney, eastern district of Michigan.

I am delighted to see a long-time friend, Frank Donaldson, who has had a distinguished career as a professor at Cumberland Law School at Stanford University, and who has been serving now as a U.S. attorney for quite a while with great distinction in the northern district of Alabama.

Frank, we are delighted to see you here.

STATEMENTS OF PANEL CONSISTING OF HON. FRANK W. DONALDSON, U.S. ATTORNEY, NORTHERN DISTRICT OF ALABAMA; HON. STEPHEN M. McNAMEE, U.S. ATTORNEY, DISTRICT OF ARIZONA; AND HON. ROY C. HAYES, U.S. ATTORNEY, EASTERN DISTRICT OF MICHIGAN

STATEMENT OF FRANK W. DONALDSON

Mr. DONALDSON. Thank you, Mr. Chairman and Senator Grassley. We appreciate immensely the opportunity to appear before the committee.

On my right, Senator Heflin, is Roy C. Hayes, known as Joe Hayes, U.S. attorney for the eastern district of Michigan; and on my left is Mr. Stephen McNamee, the U.S. attorney for the district of Arizona.

I would like, Mr. Chairman, to introduce Mrs. Katherine Deoudis, an attorney who is assistant deputy in the Executive Office, and Mr. David Schiller, assistant U.S. attorney for the eastern district of Virginia. I take pride in introducing them because they were instigators, initially, in getting this bill under way and have worked on it since that time. Their efforts have been prodigious. We are grateful to them.

Now, Mr. Chairman, Mr. Lide, the U.S. attorney for South Carolina, would be here today in my place sitting here except he is ill. He is chairman of the Subcommittee on Legislation and has prepared for the committee a statement which has been provided to the committee.

Senator HEFLIN. It will be made part of the record.

[The prepared statement of Mr. Lide follows:]

STATEMENT

OF

HONORABLE VINTON DeVANE LIDE

UNITED STATES ATTORNEY

DISTRICT OF SOUTH CAROLINA

BEFORE

THE

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

OF THE

COMMITTEE ON THE JUDICIARY

U. S. SENATE

WASHINGTON, D.C.

CONCERNING

THE FEDERAL DEBT COLLECTION PROCEDURES ACT

APRIL 15, 1988

Mr. Chairman and Members of the Subcommittee --

I appreciate the opportunity to testify before you today in support of an important and unique piece of legislation--the Federal Debt Collection Procedures Act (S. 1961). With me this morning are my distinguished colleagues, United States Attorney Roy C. Hayes, Eastern District of Michigan, Chairman of the Advisory Subcommittee on Debt Collection; United States Attorney Stephen M. McNamee, District of Arizona, Vice Chairman of the Attorney General's Advisory Committee of United States Attorneys; and United States Attorney Frank W. Donaldson, Northern District of Alabama, who serves with me on the Advisory Subcommittee on Legislation and is also a member of the Attorney General's Advisory Committee.

The Federal Debt Collection Procedures Act represents the first time omnibus legislation has been drafted by knowledgeable Assistant United States Attorneys out in the field. It has the acknowledged support of all ninety-three (93) United States Attorneys. We handle the vast majority of judicially-enforced collections on behalf of the federal government. Our experts identified the problems and conceived of the solution. The proposed legislation reflects our collective legal knowledge and practical experience. We are honored to be here this morning to represent our colleagues across the Country who have collaborated in this significant endeavor.

The Federal Debt Collection Procedures Act will create a uniform federal statutory scheme for the collection of federal

debts by federal attorneys in our federal courts. Virtually all federal debt collection enforcement is currently done in federal court utilizing state law.

To better reflect the uniform support of all United States Attorneys, I ask that you include in the record a resolution signed by every United States Attorney urging your prompt and favorable consideration of this legislation. We regard the enactment of the Federal Debt Collection Procedures Act as vital to the improvement of our financial litigation and enforcement program.

Today, April 15, 1988, when honest and conscientious Americans across the country are paying their federal tax debts, we are here to tell you of the difficulties faced by those of us who must pursue those who would purposefully shirk their responsibility to pay their debts to the United States.

For Fiscal Year 1987, over $83 billion in delinquent debt has been reported by federal agencies to the Office of Management and Budget.[1] For Fiscal Year 1986, this figure was approximately $63 billion.[2] Our own inventory of criminal debts as of the end of January 1988 is $550 million, up from $356 million in Fiscal Year 1986. We anticipate our criminal fine caseload will grow dramatically as a result of the requirements of the Sentencing Guidelines which implement the Sentencing Reform Act.

1 Management of the United States Government, Fiscal Year 1989, Executive Office of the President, Office of Management and Budget, February 1988.

2 Management of the United States Government, Fiscal Year 1988, Executive Office of the President, March 1987.

THE PRESENT SYSTEM FOR FEDERAL DEBT COLLECTION IS UNFAIR

The present system for collection of federal debts is inherently unfair. Our proposed legislation aims to correct the inequities that exist for federal debtors, and the federal government and the American taxpayer. The proposal creates a firm but fair comprehensive statutory scheme for the collection of all federal debts. Every provision in the Act is based upon existing law of some state. We simply tried to take the best of the laws of the several states.

Federal loans are made under uniform federal standards, federal taxes are imposed under a uniform federal tax code and civil penalties and criminal fines are imposed under federal laws and regulations. However, pursuant to the Federal Rules of Civil Procedure, after a civil money judgment is rendered or a federal criminal fine imposed, the United States must look to the law of the state where the cause of action lies to determine what collection remedies are available to collect the debt owed to the federal government.

Needless to say, there is great diversity in the debt collection laws of the various states. Some states have strong collection remedies, while others are havens for debtors.

The Federal Debt Collection Procedures Act will provide the necessary legal enforcement tools to assist the federal government in its efforts to recover the dramatically increasing number of debts owed.

There is inherent unfairness in a system which requires borrowers to compete for monies under uniform federal

requirements, but leaves them more or less obligated to pay those debts based upon the law of the state in which they choose to locate. The same is true of those who are fined by the government, with the success of collection efforts then depending upon the laws of the state where the debtor is located. Those who reside in states that have strong debt collection statutes bear a disproportionate amount of the burden. The United States can make debtors in such states as Arizona and Alabama pay their debts to the government. We have the tools to go after the truly recalcitrant debtors and the leverage to encourage voluntary compliance from others. However, debtors who reside in states with weak debt collection laws--the debtor havens such as Texas and Florida--can ignore their federal debts with impunity.

The United States must treat all its citizens equally; whether it be the student who needs money for school, an entrepreneur who cannot get a loan for his business from a bank or a veteran who wants to buy a home. We are proposing in the Federal Debt Collection Procedures Act a system whereby those who benefit from the federal largess are required to pay back their obligations under a uniform federal system.

THE EMERGING RECOGNITION OF THE IMPORTANCE OF A FEDERAL DEBT COLLECTION SCHEME

Since 1979, the General Accounting Office has reported that state law impediments are among the problems which hamper debt collection litigation and enforcement.[3]

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3 Department of Justice Should Coordinate Criminal and Civil Remedies to Effectively Pursue Fraud in Federal Programs, (GCD-80-7, October 25, 1979).

In January 1981, the Office of Management and Budget made a government-wide review to identify debt collection problems facing the federal government. The report was highly critical of the Department of Justice's debt collection litigation efforts.[4] In subsequent General Accounting Office reports issued in 1985, 1986 and 1988, the problem of the impediments of state law was again identified.[5]

The Debt Collection Act of 1982, 31 U.S.C. §3701, amending the Federal Claims Collection Act of 1966, 31 U.S.C. §37, was passed to improve federal debt collection by giving federal agencies administrative authority to collect delinquent debts.

The Congress has created various federal tools for the collection of federal debts. The Congress also enacted the Deficit Reduction Act of 1984 (Public Law 98-369) which created a two-year pilot program in which the Internal Revenue Service collected

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[4] Report on Strengthening Federal Credit Management, Office of Management and Budget, January 1981.

[5] After the Criminal Fine Enforcement Act of 1984 Some Issues Still Need to Be Resolved, (GAO/GGD-86-02, October 10, 1985); and Financial Integrity: Justice Made Progress But Further Improvements Needed (GAO/GGD-86-9, October 31, 1985).

Justice Department: Improved Management Processes Would Balance Justice's Operations (GAO/GGD-86-12, March 14, 1986); and Justice Department: Impediments Faced in Litigating and Collecting Debts Owed the Government (GAO/GGD-87-7BR, October 15, 1986).

Justice Department: Impediments Faced in Litigating and Collecting Debts Owed the Government (GAO/GGD-87-7BR, October 15, 1986).

Justice Department: Litigation and Collection of Civil Fines and Penalties (GAO/GGD-88-23FS, January 1988).

legally enforceable debts owed to the federal government by withholding federal income tax refunds. This was recently extended to June 30, 1988, in the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203). However, we recommend that the deadline be further extended.

In response to the dramatic growth in the delinquent debts owed to the United States, the Congress enacted the Federal Debt Recovery Act of 1985 (Public Law 99-578) which would allow the Department of Justice to contract with private sector attorneys to strengthen the government's ability to collect the monies owed to it.

The Governmental Affairs Subcommittee on Energy, Nuclear Proliferation and Government Processes noted that while the Department of Justice has done much, without immediate and aggressive action billions more dollars owed to the United States would remain uncollected.[6]

The Federal Debt Collection Procedures Act will provide the necessary legal enforcement tools to assist the federal government in its effort to recover the increasing number of debts owed to it. We must wage a tremendous battle if we are to recover the billions of dollars owed to the United States. The United States Attorneys are the federal government's collectors of last resort. We are willing to do the job but respectfully ask for the tools to do the job.

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6 Committee Report on S. 209, Committee on Governmental Affairs.

THIS LEGISLATION WILL HAVE NO IMPACT ON EXISTING STATE LAW

This legislation does not interfere with the state law remedies in any way and does not affect the procedures in state courts. The focus of this legislation is the debtor-creditor relationship between the United States and the debtors who owe it money. The Federal Debt Collection Procedures Act merely creates a federal procedural system so that the federal government can better coordinate its debt management effort.

Currently, state law determines the remedies to be used in the collection of federal debts merely because Federal Rules of Civil Procedure 64 and 69 adopt it.[7]

The substitution of federal procedural remedies for those remedies that exist in state statutes does not affect the applicability of state law theories of liability. State law will continue to govern, for example, as to treatment of property held by co-tenants, a corporation's liability for debts of a shareholder under the alter ego doctrine and a partner's liability for debts of the partnership.

It is entirely appropriate for the Congress to create a federal scheme for the collection of the debts owed the United States. Under Article III, Sections 1 and 2 of the United States Constitution, Congress has the exclusive power to legislate regarding the forms of action and writs to be used in the courts of the United States.[8]

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[7] See, Custer v. McCutcheon, 283 U.S. 514 (1931).

[8] See, e.g., Riggs v. Johnson Co., 73 U.S. 166 (1867); Fink v. O'Neil, 106 U.S. 272 (1882); and Lamaster v. Keeler, 123 U.S. 376 (1887).

In Pink vs. O'Neil, this power of Congress was discussed in the context of legislation with a provision similar to Rule 69 of the Federal Rules of Civil Procedure and the Judiciary Act of 1789. Provisions of this Act which provided for a means of recovery of debts owed to the United States were found to come within the spending power of Congress set out in Article I, Section 8, Clause 1 of the United States Constitution.

ABSENCE OF A FEDERAL DEBT COLLECTION LAW IMPEDES EFFECTIVE FEDERAL COLLECTION

The Assistant United States Attorneys who drafted this proposal are on the front lines of the government's massive effort to recover the billions of dollars owed to it. This legislation draws upon their knowledge of the various states' law remedies and upon their practical experience in collecting the federal government's debts. Every provision in this bill is designed to address a specific collection problem encountered in our day-to-day work.

Every remedy set forth in this legislation exists in a similar form in one or more existing state statutes. These state provisions, upon which those in the Act are modeled, have withstood challenge in the courts. Careful consideration was given by the drafters to assure that the Act affords federal debtors full due process protection.

There are three kinds of impediments in the present system to the efficient and effective judicially-enforced collection of monies owed the United States. First, is the absence of particular collection remedies in certain states. State

collection laws run the gamut from strong creditor laws, such as in California and New York, to strong debtor laws that render debtors judgment-proof.

Second, is the presence of administrative hurdles which make it impractical for the United States to utilize existing remedies.

Finally, we cite the very nature of the collection system. A system of fifty state codes makes a well-coordinated federal debt management effort extremely difficult.

We have submitted a detailed Section-by-Section Analysis to the Congress which contains the explanation of all of the provisions of the Act. In my testimony today, I would like to highlight a few areas that are illustrative of the problems under the present system.

1. Variances or absence of garnishment provisions under state law impede efficient collection.

Garnishment--the attachment of money owed to the debtor which is in the hands of a third party--is generally a very effective and efficient way to collect debts. Only five states--Florida, Maine, North Carolina, South Carolina and Texas--have no garnishment provisions under their state codes.

The amount of money owed to the United States that goes uncollected due to the lack of a state law garnishment procedure is impossible to determine. However, a strong inference can be drawn to our success through the Internal Revenue Tax Refund Offset Program in these five states. As of the end of March 1988, the Department of Justice has recovered close to $1 million from just these five states in both offsets of delinquent debtors'

federal income tax refunds and voluntary payments from debtors who were targeted for offset for Tax Year 1987.

In theory, these debtors' wages could have been garnished and even more money recovered. In states without offset, the United States is limited to collection through the serendipitous recovery of federal tax refund money even though the debtor is employed.

For example, in Texas the United States has a judgment on a student loan default against a local reporter who did a story on student loan defaulters. This debtor's name has been submitted for offset of her tax refund.[9]

In the other forty-five states, where state law provides a garnishment remedy, the administrative burden and cost to the government often makes this tool impracticable. For example, under Michigan law, a garnishment must be filed every pay period and a one dollar filing fee is required. In Detroit, the location of one of our largest United States Attorney offices, the United States Attorney has many debtors who are auto workers who are paid weekly. The paperwork to garnish these debtors' weekly wages is extremely burdensome. The Justice Management Division estimates that it costs the federal government twenty-five dollars every time it files for garnishment under Michigan law.

In Wisconsin, the United States Attorney must not only file for garnishment every pay period, but must pay a twenty-four

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[9] United States v. Cheryl Emerson, Civil Action No. SA83CA225, Western District of Texas (April 27, 1983).

dollar fee. The total cost to garnish in Wisconsin makes it non-cost effective in many instances.

Ohio state garnishment procedures have allowed a convicted gambler to avoid payment of fines totaling approximately $2 million.[10] This debtor works on a commission basis for a corporation owned by his wife. Because Ohio law requires that fifteen days prior to wage garnishment, a creditor must send a written demand for payment, the debtor is on notice that the garnishment will be forthcoming. As the garnishment is only effective for the wages owed at the time the garnishment is served, all the debtor has to do to evade payment under Ohio garnishment is to make certain that any monies due him are paid prior to expiration of the fifteen day notice period. When our garnishment was served, there was no money owing to the debtor.

Under the Federal Debt Collection Procedures Act, these types of horror stories will not occur. The United States will be able to obtain a continuous garnishment--as it does under the laws of Maryland and New York, among others. Notice of the garnishment is given to the debtor at various stages, as well as opportunities for hearings. While the clerk will issue the writs, the court supervises critical stages (e.g., considering objections to the answer of the garnishment, determining liability for failure to answer, objections to accounting, etc.). There is no filing fee required of the United States, just as there is no filing fee required of the federal government to initiate litigation in federal court.

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10 United States v. Frank Hook, Criminal Action Nos. C282729 and C2831317 (May 16, 1983, and October 9, 1984).

Under the Act, a garnishment filed by the United States will not have superiority over garnishment orders on behalf of dependents with support orders or other creditors who have prior garnishments.

2. Variances in state law property exemptions hinder effective collection of federal debts.

The great variance in the exemptions available to debtors under state law creates difficulties for the effective collection of federal debts and results in grossly inequitable treatment of similarly situated debtors. For example, debtors in the District of Columbia and Idaho have no exemption to protect their homesteads, whereas debtors in Florida and Texas can literally exempt homesteads worth millions of dollars.

The United States Attorney's office in the Northern District of Texas carries a Twenty-Seven Thousand Dollar ($27,000.00) criminal fine in its inventory in the case of a mortgage banker who was convicted of mail fraud in Utah in 1977.[11] He returned to Texas after serving his prison term. His parole supervision report showed that he had a monthly salary of Two Thousand Five Hundred Dollars ($2,500.00) which could not be garnished under Texas law. This debtor also has an expensive home which is exempt under Texas law. Since 1977, the government has only been able to collect Three Hundred Twenty-Five Dollars ($325.00).

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[11] United States v. Chester Brewer, Criminal Action No. CR 64-71 (March 30, 1973; transferred to Northern District of Texas on February 19, 1975).

In November 1982, this debtor filed for Chapter 13 bankruptcy protection. Utilizing Texas state law exemptions in bankruptcy, the criminal fine is essentially uncollectible.

Criminal proceedings often require knowledge of state law exemptions by the United States Attorney in the courtroom. The widely disparate state exemption schemes pose real problems in criminal collections. For example, in Pennsylvania, a criminal defendant was indicted on charges of conspiracy and unlawful possession of 100 pounds of explosives, a machine gun, hundreds of false Social Security cards and other illegal items.[12] The defendant was released on Three Hundred Thousand Dollars ($300,000.00) bail which was secured by mortgages on Texas real estate owned by her father and sister. The defendant fled and the United States obtained a forfeiture of the bail and sought to enforce it against the two houses specifically pledged as security. For two years, the United States Attorney's office in the Western District of Texas has sought with no success to overcome the Texas homestead exemption which precludes liens against homesteads except for purchase money or improvements.

These types of problems will be overcome by a uniform federal system. The exemptions for federal debts in the Federal Debt Collection Procedures Act are modeled after the existing federal exemptions schedule found in the Bankruptcy Code. The bankruptcy exemption scheme was carefully crafted to balance the needs of the creditors and the needs of the debtor to be able to make a

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12 United States v. Elizabeth Ann Duke, Criminal No. 85-222-2 (December 19, 1985).

fresh start and become financially stable. For this reason, we believe that the exemption schedule contained in the Act is a good one.

3. A collection effort utilizing fifty different state codes hinders a well-coordinated federal credit and debt collection management program.

At the front end of the credit cycle, the absence of a federal debt collection procedural statute means that the federal government does not know in advance what judicial remedies will be available in the event of a default by a federal borrower. To assure certainty, private sector lenders often stipulate what law will apply in the event of a default by the borrower. The federal government cannot deal with its borrowers in such a fashion. Therefore, a defaulting borrower can in large measure control the government's ability to collect by changing his location.

The enactment of the Federal Debt Collection Procedures Act would allow for more meaningful lending policies to be developed. Federal agencies could be required to create uniform loan documents which would facilitate the handling of delinquent accounts.

At the back end of the credit cycle, a uniform procedure will further enhance the federal government's ability to collect. For the first time, maximally effective legal training of the United States Attorney debt collection attorney and non-attorney personnel could be achieved. Debt collection work is, to a large extent, non-attorney, labor-intensive. Effective training of debt collection agents is critical to our success. Presently, we can only discuss judicial remedies in a generic sense and these

agents must return to their units to grapple with the vagaries of state law on their own.

When we are able to litigate under a single federal collection law, uniform pleadings and court forms will be developed. The present system is enormously duplicative -- we literally reinvent the wheel in fifty states.

THE IMPORTANCE OF THE FEDERAL DEBT COLLECTION PROCEDURES ACT TO THE REGULATORY AND LAW ENFORCEMENT FUNCTION

The breadth of types of claims that the United States Attorneys are called upon to enforce is as wide as the lending and enforcement responsibilities of the federal agencies. There is a misconception that federal debt collection consists primarily of collection of student loans.

This is hardly the case. In fact, the United States Attorneys are responsible for collecting from defaulters who have received loans from any of the credit agencies. We collect on multimillion dollar claims for rural electrical cooperatives and multifamily housing complexes. We prosecute and collect against defense contractors and doctors who deal fraudulently with the federal government. We protect the well being of our citizens and the land by enforcing safety penalties and environmental fines. We ensure the integrity of our federal tax system by prosecuting and collecting from cheaters. These are examples of the multitude of types of claims that the United States Attorneys are called upon to enforce.

The United States Attorneys take pride in their law enforcement record on behalf of the American people. While our work is most highly visible in such areas as illegal drugs and

white collar crime, financial enforcement is also a priority. On February 23, 1988, President Reagan sent a message to our annual conference complimenting all United States Attorneys for our efforts to recover the monies rightfully due the United States from those who refuse to meet their financial responsibilities to the federal government. The President specifically noted our significant effort in drafting this proposed legislation.

Our ability to collect makes a palpable impact on the daily lives in our communities. Pursuant to the Victims of Crime Act of 1984, our collection efforts have been infusing millions of dollars into state and local victim and witness assistance programs. Over 95 percent of the criminal fine money collected from federal defendants is turned over to the states for this purpose.

President Reagan has declared next week--April 17-23, 1988--to be National Victims Week. He has urged all government officials and private citizens to devote their efforts to assure that victims are treated with compassion and fairness for the good of justice and human dignity.

The enactment of the Federal Debt Collection Procedures Act is a critical step in our continuing effort to collect the billions of dollars owed to the United States. With a uniform law the federal government can truly treat federal debtors equally. The United States Attorneys urge your swift and favorable consideration of our proposal.

Thank you for permitting me to appear before you today. My colleagues and I would be pleased to answer any questions that you may have about the Federal Debt Collection Procedures Act.

Mr. DONALDSON. I would like to also make a part of the record a resolution prepared by the U.S. attorneys and signed by all 93 of us, which I think is unique in that we all 93 support this bill before you.

Senator HEFLIN. It will be made a part of the record.

[The resolution of the U.S. attorneys follows:]

RESOLUTION IN SUPPORT

OF

THE FEDERAL DEBT COLLECTION PROCEDURES ACT OF 1987

WHEREAS, the Congress has placed increasing emphasis on the importance of the collection of the debts owed to the United States and has made clear at numerous hearings that it expects improved performance in the collection of these debts by the Department of Justice; and

WHEREAS, at a time when growing federal budget deficits threaten the financial security of the nation, sound fiscal management demands maximum effectiveness in the collection of the monies owed to the United States; and

WHEREAS, the Department of Justice, specifically through it's ninety-three United States Attorneys, has responded to the call of the President of the United States, as well as that of Congress, to vigorously pursue collection of all debts owed to the Government and has recognized an urgent need for uniform legislation with which to properly address the problem; and

WHEREAS the United States Attorneys, themselves, have caused proposed legislation to be drafted by experienced Assistant United States Attorney debt collectors; and

WHEREAS, the enactment of this legislation will substantially strengthen the ability of federal prosecutors to collect the billions of dollars owed to the United States,

THEREFORE be it resolved, that the undersigned United States Attorneys respectfully urge the United States Senate and the United States House of Representatives to devote their prompt and favorable consideration to the timely processing of this urgently needed legislative proposal, the Federal Debt Collection Procedures Act of 1987.

Signed:

United States Attorney	Western District of Missouri District
United States Attorney	Southern District
United States Attorney	Northern District of Ind. District
United States Attorney	Northern District, Ill. District
United States Attorney	N. D. Georgia District
United States Attorney	Kansas District
United States Attorney	East. Tennessee District
United States Attorney	N.D. New York District
United States Attorney	E.D. Ky. District

United States Attorney	N.D. of Ohio District
United States Attorney	District
United States Attorney	E.D. - Pa District
United States Attorney	Nevada District
United States Attorney	Idaho District
United States Attorney	Oregon District
United States Attorney	S.D. W.V. District
United States Attorney	Puerto Rico District
United States Attorney	E.D. Virginia District
United States Attorney	W.D. - Pa. District
United States Attorney	W.D. - Virginia District
United States Attorney	W.D. - Kentucky District
United States Attorney	M.D. Alabama District
United States Attorney	E.D. California District
United States Attorney	S.D. - Ga. District
United States Attorney	M.D. of Pa. District
United States Attorney	Kansas District

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United States Attorney	W.D. TEXAS District
United States Attorney	EDOK District
United States Attorney	R Hole Island District
United States Attorney	E.D. Wisconsin District
United States Attorney	Vermont District
United States Attorney	New Hampshire District
United States Attorney	C.D. California District
United States Attorney	S.D. Indiana District
United States Attorney	N.D. California District
United States Attorney	E.D. Louisiana District
United States Attorney	Guam / NMI District
United States Attorney	Southern Dist Texas District
United States Attorney	EASTERN DIST OF TEXAS District
United States Attorney	Western New York District
United States Attorney	Connecticut District
United States Attorney	Wyoming District
United States Attorney	Western Michigan District

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United States Attorney	Delaware District
United States Attorney	Nebraska District
United States Attorney	Montana District
United States Attorney	So. Dist. of Illinois District
United States Attorney	Northern District of Ohio District
United States Attorney	Central District of California District
United States Attorney	District of Columbia District
United States Attorney	New Jersey District
United States Attorney	Eastern Dist. North Carolina District
United States Attorney	Western District of Arkansas District
United States Attorney	Middle District of Florida District
United States Attorney	North Dakota District
United States Attorney	Northern District of Oklahoma District
United States Attorney	District of Colorado District
United States Attorney	Middle District of Louisiana District
United States Attorney	Southern Dist. of N.Y. District

April 7, 1988
Date

Mr. DONALDSON. Thank you, sir.

Most of the comments which I had prepared have already been stated, so I will not repeat them. I would like to briefly make two or three statements, and one of those is this, Mr. Chairman: That there is pending in the Senate the Omnibus Anti-Drug Act, S. 2205, and in that there is a reference to funding of $2.3 billion for that act from additional collections by Federal attorneys.

We think that this bill pending here is going to help aid in collecting additional funds. We firmly believe this bill will result in more collections, judicially enforced, and that it will, therefore, fit in or tie in with funding for the Omnibus Anti-Drug Act.

Second, along a similar line, as the chairman knows, the Victims of Crime Act of 1984 provides that some funds from criminal fines will go to support victims and witness assistance. We think that there will be increased criminal fines collections and, therefore, more money for the statute that exists already and provides money for victims and witnesses assistance.

Each of my colleagues would like to make a brief statement, Mr. Chairman.

STATEMENT OF ROY C. HAYES

Mr. HAYES. Good morning, Your Honor.

We would indicate at this time, Your Honor, as the Debt Collection Subcommittee chairmen, we have been intensively engaged in the last 7 months in making sure that all of our offices are up to date in terms of cases filed and matters proceeded upon, as well as debts collected.

As a U.S. attorney from a major metropolitan area, I will indicate that it is difficult for debt collection to receive its priority when it competes with major drug cases, public corruption and other cases of major fraud. However, I think that the act, when it puts a fund in connection therewith, as you have indicated earlier, will have the effect of giving an automatic prioritization within each of the offices.

I am pleased to report that I think our office is similar to the experience of most. Two and one-half years ago when I came in, we were collecting roughly $200,000 per month. Now, 2½ years later, we are collecting in excess of a million dollars per month. I think that there is a limit to which good organization and good effort can achieve, and I appreciate the consideration of this bill. I think this bill will aid us immensely.

Thank you, Your Honor.

STATEMENT OF STEPHEN M. McNAMEE

Mr. MCNAMEE. Thank you, Mr. Chairman.

I am pleased that Arizona, like Alabama, has good creditor laws, and our laws were used as a basis and model for this proposed bill. In Arizona, we have a population of approximately 4 million people, and last year our debt collection unit collected almost $6 million.

I would echo what Mr. Donaldson said about the funding of the victim/witness fund through criminal fines. In our particular State, we have large native Americans who are Federal victims of

crimes, and we need that money to help them get their lives back in order.

Last year, our debt collection unit received a very prestigious award from the Treasury Department for their efforts in collecting debts due the United States.

In 1971, I became an assistant U.S. attorney. At that time in our Tucson office, we had approximately 33 civil cases and about 50 debt collection cases. Now, we have over 2,500 debt collection cases in the district, and that does not count bankruptcy matters or other affirmative civil litigation.

The collection of debts due to the United States is extremely labor intensive; it is time consuming; and oftentimes by the time the debt comes to the U.S. attorney's office to collect, we get what we call the dregs. They have already gone through the agency's effort to collect; they have gone through private collection efforts; and then they are referred to the U.S. attorney's office to try and obtain some sort of judgment or other compromise of the debt.

So in that regard, it is a very, very difficult process, and we believe that this bill would help us immensely in our effort to uniformly collect the debts due to the United States.

Thank you.

Mr. DONALDSON. Mr. Chairman, may I make one brief statement in the light of what was said here? In 1981, when I became a U.S. attorney, I told the people in my office we wanted to collect delinquent debts from debtors who owed the Government and who had the ability to pay. We collected $900,000, and that sum has increased each year. For the last 2 years, in a district with 2.3 million people, we have collected approximately $5.2 million in cash each year.

The bill pending before the committee, with Alabama's good collection laws, is not going to change the picture a great deal in Alabama though we know it will in a lot of other places.

Senator HEFLIN. Let me ask you, in this proposed bill, there are some provisions, I believe, such as arrest of judgment creditors. Now, are there adequate protections in the bill for the rights of people to due process pertaining to any aspect of where they may well arise?

Mr. DONALDSON. Yes, sir.

Senator HEFLIN. Because there are some prejudgment endeavors. That is standard in most State laws pertaining to collections as to prejudgment efforts and attachments as they exist. You in particular, Professor Donaldson, as a believer in due process and as a district attorney, do you feel that the provisions in this bill are adequate for due process protections?

Mr. DONALDSON. Yes, sir. The provisions in this bill are found in State laws. In other words, the provisions here are drafted and lifted from various State laws. So we do not have a bill in which we plucked provisions out of the air, but we have used States laws and laws that have been interpreted by the courts.

Second, there is one thing that we are dead set on, and that is that there be fairness and equity and that we find it in this bill. For example, with respect to prejudgment actions, we involve the court as opposed, say, to post-judgment actions in which we involve the clerk with respect to a garnishment or attachment.

Mr. HAYES. Judge, I would like to speak to that as well. It is my understanding that the bill talks about that there must be a determination made, and naturally by us, that someone is hindering or concealing or an intent to hinder, delay or defraud the United States in the collection of its debt.

Since that is a judgment that will be made from the plaintiff sides of the case by a U.S. attorney, who, I think, has more visibility and accountability for that decision, I think that that should alleviate some of the concern. But I recognize the concern of the question, and I think that there are protections here, as I have stated.

Senator HEFLIN. If you had Federal jurisdiction on this, what effect would it have on the workload of the present courts? Will it necessitate increased judgeships in some places?

Mr. DONALDSON. If I understand the question, Mr. Chairman, the load today on the Federal courts as a result of collections is de minimis because very few cases are tried. The same we think would be true here. We do not see anything here that would result in imposing a heavy burden on the court.

Mr. MCNAMEE. Mr. Chairman, I believe that it would also streamline procedures in court so that you might actually reduce court time. It allows things to be done in a uniform manner. A lot of these are things which are ministerial acts of the court, are not substantive acts that have to be done before the court.

Mr. DONALDSON. This matter concerned me in 1981. I thought, well, I will be hearing from the chief judge. He will be after me saying, "What are you doing to us with these extra cases?" That has never occurred.

Senator HEFLIN. Well, under the proposal, there is a probably a fairly good chance that the diversity of jurisdictional amount would be raised from 10,000 to 50,000, which means possibly some, but would also mean that in debt collections on diversity of citizenship that that would remain in the State courts. Are there studies or figures on the amounts of debts that get into the Federal court jurisdiction on that?

Mr. MCNAMEE. Mr. Chairman, I do not believe that would affect our ability at all because, by statute, the United States has absolutely a right to be in Federal district court regardless of the amount.

Senator HEFLIN. That is right. It is based on Federal law. But at the present time, you are not in State courts, but you just are required to operate under the State law.

Mr. MCNAMEE. That is correct.

Mr. DONALDSON. On the other hand, Mr. Chairman, this bill does not impinge in any way on private creditors and their private actions if they come under that new $50,000 jurisdiction in diversity.

Senator HEFLIN. Is there a way that magistrates could have more of a role in this collection in view of the *Marathon* case? Are there certain ways that it could be worded? If you eliminate State law, would this still require that the judgment should be entered by the Federal judge?

Mr. HAYES. I believe it could, Mr. Chairman. It says in the bill it encourages the use of magistrates, and in practice and in fact, I

would imagine that magistrates would receive the bulk of the work under this, working under the supervision of judges.

Mr. DONALDSON. That is taking place today, Mr. Chairman, in certain procedures as it exists. Certainly, in my district, magistrates will preside over a debtor's hearing, for instance.

Senator HEFLIN. Well, thank you, gentlemen. We may have additional questions in writing for you to answer.

Mr. MCNAMEE. Mr. Chairman, just before we leave here, we have prepared some charts up here which give an indication of the amounts of debts due to the United States and that have been referred to us for judicial enforcement, to give you an idea of the kinds of things that we handle and the amounts involved.

Also I believe some newspaper articles about Operation Deadbeat and other activities have been given to members of the staff for their consideration. We also have a section-by-section analysis of the bill which has been submitted also.

One of the questions that was asked by Senator Grassley when he was here was about the nature of the debt and how much is really out there; I think you echoed those same sentiments. To give you an example, we had a case in bankruptcy where the outstanding claim by the Government was $40 million. When all was said and done and the bankruptcy closed, the Government was only able to recover $1 million out of that. That is why it is so difficult to put a handle on the actual amounts and dollars involved here as to what the bottom line is, what is actually recoverable to the United States.

Mr. DONALDSON. Thank you, Mr. Chairman.

Mr. HAYES. Thank you, Senator.

Mr. MCNAMEE. Thank you, Mr. Chairman.

[Questions and answers, subsequently submitted for the record, follow:]

Responses of Frank W. Donaldson
To Questions From Senator Thurmond

Federal Debt Collection Procedures Act

Hearing on S. 1961

April 15, 1988

Question: Section 3401 of this legislation exempts certain property from the reach of the federal goverment. Almost every state in these United States, including the State of South Carolina, has a homestead law which is designed to protect the family home from the reach of creditors. To what extent will the proposed homestead exemption in this legislation provide for protection against the loss of a residence?

Answer: The Federal Debt Collection Procedures Act creates an exemption in real or personal property used as a homestead up to $7,500. The language of Section 3401(a) is taken directly from an existing homestead exemption statute contained in the Bankruptcy Code at 11 U.S.C. §522.

This amount would provide greater protection for the citizens of South Carolina where the homestead exemption is only $5,000. There are places in which there is no homestead exemption at all (e.g., Idaho and the District of Columbia) and others in which it is possible to exempt literally millions of dollars in a homestead (e.g., Florida and Texas).

The Bankruptcy Code homestead exemption was used as a model for the homestead exemption in the Act because of the similarity in purpose behind each statute. Both the Bankruptcy Code and the Federal Debt Collection Act exemptions seek to be fair to creditors while allowing the debtor sufficient assets to get a "fresh start" toward financial stability. The Federal government has a great interest in assuring that its debtors are not rendered indigent and become dependent upon governmental monies for their subsistence.

Under Section 3013, the remedies of the United States to enforce its judgments against property which is co-owned by the debtor and others is limited by the law of the state in which the property is located. Therefore, if state law prohibits the breaking of a tenancy by the entireties, a homestead that is owned by a husband and wife would be exempt.

The homestead exemption contained in the Federal Debt Collection Procedures Act is designed to be fair--both to the debtor and to the United States, while taking into account the right of the states to prescribe how property can be held by its citizens.

Question: On page 10 of the prepared statement, you begin to discuss the efficiency and advantages of having garnishment provisions in this legislation. Yet, you also note that there are five states, including the State of South Carolina, which have no garnishment provisions under their state codes. Do you believe the garnishment provisions in this legislation are reasonable?

Answer: We believe that the garnishment provisions set forth in Sections 3104 and 3306 of the Federal Debt Collection Procedures Act are reasonable. Careful consideration is given to the due process rights of the debtor and a writ of garnishment may issue only with the court's approval.

The purpose of the legislation is to create a debt collection procedural system that provides equitable treatment to all federal debtors. Federal borrowers compete under uniform federal criteria for federal loans. Federal taxes and federal criminal fines are imposed under uniform laws. It is inherently reasonable to require the repayments of these amounts under a uniform federal system.

The Federal Debt Collection Procedures Act does not give a garnishment in favor of the United States any special priority over garnishments in favor of other creditors. Garnishments are honored on a first in time basis. Orders of garnishment for child or spousal support continue to have priority.

A wage garnishment obtained under the Act is limited to 25 percent of disposable income. This is in accord with the existing Federal limitation set forth in the Federal Consumer Credit Protection Act of 1968, 15 U.S.C. § 1672(b).

It is my understanding that many debtors have transferred assets to other persons in an effort to avoid having these assets applied to the payment of the debt owed the United States. When this is done, the United States should be able to set these fraudulent transfers aside. However, state laws vary with respect to what constitutes a transfer of assets that is fraudulent to creditors. Please explain how this law will correct the present inequities with respect to fraudulent conveyances.

Subchapter F -- Fraudulent Transfers seeks to remove the inequities that exist under the present system in which state law determines what transfers are fraudulent as to the United States and other creditors. Every state has standards regarding what constitutes a fraudulent transfer of assets. However, what may be a legitimate transfer of property under one state code constitutes fraud in another state. This results in inequitable treatment of federal debtors who are similarly situated.

The Federal Debt Collection Procedures Act will make uniform the standards for setting aside transfers of property as fraudulent to the United States. The wisdom of a standardized system is demonstrated by the fact that there are two fraudulent transfer statutes that are increasingly being used by the states. Seventeen states have adopted the Uniform Fraudulent Transfer Act which was promulgated in 1984. As of July 1, 1988, 17 states will have adopted the Uniform Fraudulent Conveyence Act which was promulgated in 1918.

Subchapter F of the proposed legislation is modeled on the more recent Uniform Fraudulent Transfer Act. This Act has already been adopted by the Bankruptcy Code and is applied to all debtors, including those with Federal obligations, in a bankruptcy setting. (See 11 U.S.C. §§ 548 to 551.) Subchapter F will remove the inequitable treatment given to federal debtors outside of bankruptcy proceedings.

The fraudulent transfer provisions of the Federal Debt Collection Procedures Act comport with Rule 18(b) of the Federal Rules of Civil Procedure. Both allow the setting aside a fraudulent transfer without having first obtained a judgment.

Senator HEFLIN. Our next panel is Mr. Martin D. Teckler, deputy general counsel, Small Business Administration, Washington, DC; and Mr. Donald L. Ivers, general counsel, Veterans Administration, Washington, DC.

Mr. Teckler, we are glad to hear from you.

STATEMENTS OF PANEL CONSISTING OF MARTIN D. TECKLER, DEPUTY GENERAL COUNSEL, SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC, ACCOMPANIED BY ERIC S. BENDERSON, ASSOCIATE GENERAL COUNSEL FOR LITIGATION; AND DONALD L. IVERS, GENERAL COUNSEL, VETERANS' ADMINISTRATION, WASHINGTON, DC

STATEMENT OF MARTIN D. TECKLER

Mr. TECKLER. Mr. Chairman, I would like to thank you for the opportunity to testify on S. 1961 this morning. With me to my right is Mr. Eric S. Benderson, our associate general counsel for litigation. Mr. Benderson has worked directly with the Attorney General's Advisory Subcommittee for Litigation as SBA's chief liaison with the Justice Department and the offices of the U.S. attorneys across the country and is quite knowledgeable on this legislative proposal.

To start, I would like to discuss with you some of SBA's activities in the debt collection process. As a result of the Small Business Administration's statutory loanmaking mandate, we currently have nearly 282,000 loans on our books. This number represents about $8.5 billion in direct Government loans and another $8 billion in guaranteed loans. The portfolio is administered by our SBA staff in approximately 90 field offices across the country.

We function much like a large bank with respect to our lending programs. Our efforts in debt collection begin with loan servicing and continue until the loan is either paid in full or no other avenue of collection remains. The large majority of our loans are current and require only routine oversight. However, approximately 22,000 loans are currently in a liquidation status. Once a loan is classified as in liquidation, foreclosure on the collateral is first sought.

Individual cases are classified as in litigation and referred to the Justice Department only when court action is necessary. We participate quite actively with the Justice Department and the U.S. attorneys offices across the country in that collection process, and we have approximately 100 of our own staff attorneys who have been given special assistant U.S. attorney status to assist in that effort.

Since our efforts in this area dovetail with those of the department and the U.S. attorneys, we are pleased to support S. 1961. We agree that the lack of uniformity in State law often impedes our ability to efficiently and effectively collect debts owed to the SBA. A uniform Federal debt collection statute would substantially improve our ability to collect such debt.

S. 1961 aims to correct the inequities that exist both to Federal debtors and the Federal Government under the current system. This proposal creates a firm but fair comprehensive statutory scheme for the collection of all Federal debts.

We believe that the legislation represents a significant effort to codify uniform Federal debt collection activity. As such, it would, if enacted, simplify and make more effective the Government's ability to collect debt owed to it.

A number of provisions are especially effective with respect to SBA debt collection activity. One of the most effective is the prejudgment attachment provision. We have included in our prepared remarks an example of where that remedy, if it were available to us, would have assisted us in making the collection that we indicated in the testimony.

Another important remedy for SBA provided by the bill is that of prejudgment receivership. We are often involved in trying to obtain receiverships which would be greatly assisted by the provisions of the bill which relate to that specific topic.

Finally, ever since the Supreme Court's decision in the *Kimbell Foods* case, which held that State law could be adopted as the Federal rule for determining lien priorities, debtors have attempted to use this decision as precedent to raise defenses under State law. For example, some courts have ruled that SBA is barred from seeking a deficiency judgment against a guarantor of a loan because it disposed of the collateral by nonjudicial means and, is, therefore, prevented under State law from obtaining a deficiency judgment. Such a defense would be obviated by the bill which provides that the right of the United States to collect a deficiency judgment following the foreclosure of a guaranteed loan or insured loan by the United States shall be governed by Federal statutes, regulations and the provisions of the loan documents involved.

I think these examples illustrate the potential increase in the effectiveness of our debt collection activities if S. 1961 were passed. We, therefore, wholeheartedly support the legislation, and we would be pleased to answer any questions you might have on the subject.

[The prepared statement of Mr. Teckler and a response to a written question follow:]

STATEMENT OF MARTIN D. TECKLER

DEPUTY GENERAL COUNSEL

U.S. SMALL BUSINESS ADMINISTRATION

Mr. Chairman and members of the Subcommittee, I would like to thank you for this opportunity to testify on S. 1961, the Federal Debt Collection Procedures Act of 1988. With me today is Eric S. Benderson, Associate General Counsel for Litigation. Mr. Benderson has worked with the Attorney General's Advisory Subcommittee for Litigation as SBA's chief liaison with the Justice Department and the Offices of the United States Attorneys across the country and is quite knowledgeable on this legislative proposal.

We appreciate the opportunity to appear before you today. I believe that the debt collection initiatives of the Administration and your efforts are both timely and highly commendable.

To start, I would like to discuss with you some of SBA's activities in the debt collection process. As a result of the Small Business Administration's statutory loan making mandate, we currently have nearly 282,000 loans on our books. This number represents about $8.5 billion in direct Government loans and another $8 billion in guaranteed loans. This portfolio is administered by a professionally trained staff located in approximately 90 field offices.

SBA functions much like a large bank with respect to its lending programs. These programs include not only making business loans, but loans to natural disaster victims, both homeowners and businesses, who have been devastated by floods, tornadoes and earthquakes, and to tens of thousands of farmers affected by drought and other adverse natural conditions.

The efforts of our debt collection staff begin with loan servicing and continue until the loan is either paid in full or no other avenue of collection remains. The large majority of our loans are current and require only routine oversight. If repayment problems develop, our staff can proceed to enforcement action or provide remedial relief. For instance, alternative repayment plans to resolve cash flow problems are often developed. If remedial efforts prove unsuccessful, a decision is made to enforce payment. Approximately 22,000 loans are currently in this "Liquidation" classification. Once a loan is classified as "in Liquidation" foreclosure of the collateral is first sought. We also have clearly defined procedures to compromise debts in instances where collateral has been exhausted.

Individual cases are classified as "in litigation" and referred to the Department of Justice only when court action is necessary. The referral letter has traditionally outlined previous collection efforts and present collectibility. Usually a suggested complaint accompanies the referral. Our efforts usually do not stop at this point. SBA attorneys prepare much of the pleadings and work with the various U.S. Attorneys' Offices in court. Where designated, they also serve as Special Assistant United States Attorneys and take complete responsibility for the entire litigation process. We have developed 100 such designations currently, and where staffing permits, intend to increase designations in the future. Moreover, SBA loan officers participate in judicial sales, and the Agency's compromise claims committees work closely with the Department of Justice to achieve the highest possible recovery. Our collection process, therefore, provides all the necessary ingredients for collection follow up. It starts with general servicing, and proceeds to problem resolution, liquidation or litigation as the situation

requires. We have specialized staff personnel at each level and clear rules for them to follow.

SBA's debt collection efforts derive from the work of approximately 800 professionals in our Central and field offices whose job it is to manage the SBA loan portfolio and collect the indebtedness owed to SBA. To aid these efforts, SBA has a centralized computer system in our Central Office to provide information concerning debts to SBA management. In addition, we have billing and payment receiving equipment in Denver which is used to receive payments. It puts about $5 million into the Denver Federal Reserve Branch Bank every business day of the year. Every SBA office also has at least one CRT and keyboard system, which contains a high speed printer to receive and send information back and forth to the Central Office.

There is at least one SBA attorney in every field office to handle the lawsuits and judicial foreclosures which arise out of our collection efforts in connection with the Department of Justice. As previously mentioned, some SBA attorneys serve as Special Assistant U.S. Attorneys for debt collection purposes. Over the years we have developed a cooperative and close working relationship with the Department of Justice and the various offices of the United States Attorneys in our efforts to collect debts owed to SBA.

Our objective for FY 1987 was to materially reduce our in liquidation caseload of indebtedness owed to SBA. Collections for FY 1987 totaled almost $1.4 billion, up from the $1.285 billion collected in FY 1986. We believe this is a remarkable achievement. Our objectives for FY 1988 are to increase these figures, and we are well ahead of these numbers at this time. To put it in some perspective, our

salary and expense appropriations to operate the entire Agency with all of its programs and people for FY 1987 was about $240 million. The cost benefit of our debt collection effort when measured against this figure was almost six to one!

As you can see, we take debt collection very seriously. Since our efforts in this area dovetail with those of the Department of Justice and the United States Attorneys, we are pleased to support S. 1961. We agree that the lack of uniformity in State law often impedes our ability to efficiently and effectively collect debts owed to the SBA. A uniform Federal debt collection statute would substantially improve our ability to collect such debt.

The purpose of the Act is to create a Federal statute scheme for the nationwide judicial enforcement for collection of delinquent debts owed to the United States. Currently, the debts owed the Federal Government must be collected under the law of the State in which the debtor is found. These laws vary greatly from state to state. Conversely, SBA's debtors incur obligations under uniform SBA standards. In this regard, it is unfair that SBA debtors who reside in states with strong collection laws are made to pay their Federal judgment debts while those debtors in "debtors' havens" effectively avoid their monetary obligations to the United States.

S. 1961 aims to correct the inequities that exist both to Federal debtors and the Federal Government under the current system. This proposal creates a firm but fair comprehensive statutory scheme for the collection of all Federal judgment debts. Every provision is based upon existing state law. The Act is meant to be used by Federal litigators in Federal courts to collect Federal debts. State law remedies remain unaffected. State law remains available in addition to those

provisions in the Act for the collection of Federal debts. In addition, the Act makes certain conforming amendments to existing statutory provisions which currently impede the efficient and maximum collection of delinquent debts owed the Government.

This legislation represents a significant effort to codify uniform Federal debt collection activity. As such, it would, if enacted, simplify and make more effective SBA's ability to collect debt owed to it.

A number of provisions are especially effective with respect to SBA debt collection activity. One of the most effective is the prejudgment attachment provision. The Agency has experienced a number of cases where the debtor, whether an individual or a small business entity has substantial cash assets. At the present time the Agency has been unable to freeze these assets in order to insure that the cash is not dissipated by the time the Agency obtains judgment. This prejudgment remedy will be invaluable in insuring that cash assets of defaulting SBA borrowers are secure from dissipation until the Agency pursues its judgment remedies. Recently, on the West Coast the Agency was unable to prevent a debtor from abscounding with $200,000 from a bank account at the time it initiated litigation. Such situations would have been prevented by prejudgment attachment.

Another important remedy for SBA provided by the bill is that of prejudgment receivership. This provision allows the United States to have a receiver appointed of property in which it has an interest prior to the entry of a judgment in favor of the Government. Such a remedy would greatly benefit SBA's collection efforts with respect to defaulting recipients of pollution control bond guarantees held by the Agency. It

would allow the Agency to have a receiver appointed to run the business or at least prevent the dissipation of assets while the Agency pursues litigation.

In California, an auto recycling facility that owed the Agency several million dollars because of its default on the indebtedness represented by two bond issues guaranteed by the Agency allowed two commercial banks to obtain liens on its equipment prior to the lien of the Agency. This could have been prevented if the Agency could have sought a receivership which would have prevented other creditors from seizing some of the company's assets prior to the Agency's exercise of its own remedies. Our inability to take control of the company was especially harmful since SBA had been working on a plan with the Department of Energy to solve the problem of disposing of some 50 tons of non-metallic waste that was generated from the recycling facility. If SBA could have obtained control of the facility by means of a receivership prior to judgment, it would have been able not only to obtain a greater recovery, but also solve the disposal problem with regard to this hazardous waste.

Ever since the Supreme Court's decision in United States v. Kimbell Foods, Inc., 440 U.S. 715, 59 L.Ed.2d 711 (1979), which held that state law could be adopted as the Federal rule for determining lien priorities, debtors have attempted to use this decision as precedent to raise defenses under state law. For example, some courts have ruled that SBA is barred from seeking a deficiency judgment against a guarantor of a loan because it disposed of the collateral by non-judicial means and is therefore prevented under State law from obtaining a deficiency judgment. Such a defense would be obviated by the bill which provides that the right of the United States to collect a deficiency judgment following the foreclosure of a

loan guaranteed or insured by the United States shall be governed by Federal statutes, regulations and the provisions of the loan documents.

Similarly, SBA is currently resisting efforts by two defaulting debtors one in Iowa and the other in New York from asserting state statute of limitations as a bar to the enforcement of a validly perfected real estate mortgage upon the grounds that the action is barred by state statute of limitations.

I think these examples illustrate the potential increase in the effectiveness of SBA debt collection litigation through the passage of S.1961. We wholeheartedly support passage of this legislation. We would be pleased to answer any questions you may have at this time.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

MAY 5 PM0

Honorable Howell Heflin
Chairman
Subcommittee on Courts and
Administrative Practice
Committee on the Judiciary
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of April 26, 1988, in which you requested a response to the following question from Senator Strom Thurmond relevant to S. 1961 - The Federal Debt Collection Act of 1988.

> Mr. Teckler, in your statement, you cite numerous remedies afforded your agency by this legislation. These remedies greatly benefit SBA's collection efforts. What do you see as being the most effective remedies available to you and other agencies?

I have enclosed relevant excerpts from my written testimony which describe three provisions of the bill which would be extremely effective for SBA and, I believe, other agencies as well.

If I may be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Martin D. Teckler

Martin D. Teckler
Deputy General Counsel

Enclosure

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Another important remedy for SBA provided by the bill is that of prejudgment receivership. This provision allows the United States to have a receiver appointed of property in which it has an interest prior to the entry of a judgment in favor of the Government. Such a remedy would greatly benefit SBA's collection efforts with respect to defaulting recipients of pollution control bond guarantees held by the Agency. It would allow the Agency to have a receiver appointed to run the business or at least prevent the dissipation of assets while the Agency pursues litigation.

In California, an auto recycling facility that owed the Agency several million dollars because of its default on the indebtedness represented by two bond issues guaranteed by the Agency allowed two commercial banks to obtain liens on its equipment prior to the lien of the Agency. This could have been prevented if the Agency could have sought a receivership

which would have prevented other creditors from seizing some of the company's assets prior to the Agency's exercise of its own remedies. Our inability to take control of the company was especially harmful since SBA had been working on a plan with the Department of Energy to solve the problem of disposing of some 50 tons of non-metallic waste that was generated from the recycling facility. If SBA could have obtained control of the facility by means of a receivership prior to judgment, it would have been able not only to obtain a greater recovery, but also solve the disposal problem with regard to this hazardous waste.

Ever since the Supreme Court's decision in United States v. Kimbell Foods, Inc., 440 U.S. 715, 59 L.Ed.2d 711 (1979), which held that state law could be adopted as the Federal rule for determining lien priorities, debtors have attempted to use this decision as precedent to raise defenses under state law. For example, some courts have ruled that SBA is barred from seeking a deficiency judgment against a guarantor of a loan because it disposed of the collateral by non-judicial means and is therefore prevented under State law from obtaining a deficiency judgment. Such a defense would be obviated by the bill which provides that the right of the United States to collect a deficiency judgment following the foreclosure of a loan guaranteed or insured by the United States shall be governed by Federal statutes, regulations and the provisions of the loan documents.

Similarly, SBA is currently resisting efforts by two defaulting debtors one in Iowa and the other in New York from asserting state statute of limitations as a bar to the enforcement of a validly perfected real estate mortgage upon the grounds that the action is barred by state statute of limitations.

STATEMENT OF DONALD L. IVERS

Mr. IVERS. Mr. Chairman, in the interest of time, I would ask that the Veterans Administration statement be submitted for the record, and I would simply say that I am pleased to appear before this committee this morning to express the strong support of the Veterans Administration for passage of S. 1961.

There are only two points that I would emphasize. That is that the Veterans Administration administers a rather large debt collection operation which operates in all 50 States. We have received through the provisions of Public Law 96-466 in a memorandum of understanding authority to litigate much of our debt collection efforts on behalf of the agency. This legislation would be extremely helpful, and we feel it would substantially increase the current ratio that we experience of $4 received for every dollar that we put into the program by making it much simpler to collect debts through the Federal court system.

As I say, in the interest of time, I will submit at this point my full statement.

[The prepared statement of Mr. Ivers and a response to a written question follow:]

STATEMENT OF

DONALD L. IVERS

GENERAL COUNSEL

VETERANS ADMINISTRATION

Mr. Chairman and Members of the Subcommittee:

I am proud to appear here today to present the views of the Veterans Administration on H.R. 3984, S. 1961, and I thank you for the opportunity to do so. With me today on my right is Douglas Bartow, of my office.

Over the past several years we have noticed a trend toward more responsible management and spending of tax dollars. A necessary part of sound fiscal management is a good, effective debt collection program. As you might expect, the Veterans Administration with its large benefits programs, has been involved in all phases of credit management and debt collection improvement efforts.

It is significant in viewing our collection efforts to remember that debtors are provided every consideration and opportunity to make arrangements for resolving a debt without resorting to litigation. At the VA, we generally send a notice to veterans as soon as an overpayment or default is discovered. At that time the opportunity to dispute the debt or request a waiver is provided, including the right to a hearing in many cases. Denial of waiver or confirmation of the non-entitlement by a hearing officer will usually begin the collection process. However, the case may, upon request, be appealed to our Board of Veterans Appeals. The Agency is required to send at least three demand letters. VA routinely offers extremely liberal payment

plans, and compromise agreements in order to enable veterans to enter repayment. In addition, there are a number of administrative collection efforts which precede referring the case for enforced collection. Offset is explored, including offset from other benefits, income tax refunds and from salary of Federal employees. Delinquent debts are reported to credit reporting agencies, and private collection agencies are being used. During most of these efforts the debtors are reminded of our willingness to work with them on a repayment plan. If all these efforts fail, the debt is sent for litigation. Under authority provided by Pub. L. No. 96-466 the Department of Justice has delegated some authority for litigating delinquent debt cases to the VA. This results in a variety of problems depending on the jurisdiction in which we must bring our suit.

Since we began litigating our own cases we have experienced many problems, which result from state laws or inconsistency among the laws of the various states. These inconsistencies create impediments to the return of taxpayers' monies which have been wrongly or erroneously paid to beneficiaries.

For example, New Mexico has a garnishment statute but many debtors in Southern New Mexico are employed in El Paso, Texas where garnishment is not available. Since most property is exempt from garnishment in Texas, there is virtually nothing you can execute upon.

In South Carolina, there are no remedies at state law to enforce judgments obtained in Federal Court. The only recourse is filing a lien in the different counties, creating a cloud on the title of any possible property owned by the debtor.

Personnel in our Washington, D.C. office have to be knowledge-

able on laws of Maryland, Virginia, and the District of Columbia to perform enforced collection on behalf of the United States. While Maryland has a garnishment statute, the District of Columbia Government does not. We can garnish the wages of a debtor employed in Prince William County but cannot garnish the wages of a guard at the Smithsonian Museum.

Additionally, the administrative burden created by the diversity of the different jurisdictions is tremendous. We must comply with varying administrative requirements imposed by different states which dictate how the United States must, for example, process a garnishment order. Some states require a detailed accounting of the calculations used to determine the amount withheld pursuant to a garnishment order while others require the completion of written interrogatories. Still other states require renewal of garnishments every pay period which is an enormous paperwork burden. In some jurisdictions monies are placed in an escrow account when they are deducted from a debtor's salary until the appropriate state official notifies the employer of how to dispose of them.

All in all, complying with such varying requirements is often time consuming and thus costly for the Veterans Administration. In some cases, state statutes effectively block the Federal Government's efforts to collect delinquent debts through litigation. A uniform set of procedures governing Federal Debt Collection would improve delinquent debt collection, allow for more effective training of Federal debt collection personnel and alleviate the administrative burden in accommodating debt collection in our 54 field stations.

This completes my prepared statement. I would be happy to answer any questions you may have.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

MAY 27 1988

Honorable Howell Heflin
Chairman, Subcommittee on Courts
and Administrative Practice
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find the Agency's response to the question which you forwarded on behalf of Senator Thurmond for the April 15, 1988, hearing by the Subcommittee on Courts and Administrative Practice. Thank you for the opportunity to provide this additional information for the record.

Sincerely,

THOMAS K. TURNAGE
Administrator

Enclosure

QUESTION FROM SENATOR THURMOND TO MR. IVERS
HEARING ON S.1961 - THE FEDERAL DEBT COLLECTION ACT

APRIL 15, 1988

QUESTION: Mr. Ivers, in your prepared statement you mention the administrative burden of having to comply with the collection law requirements of various states. Could you briefly discuss the costs associated with having to comply with collection laws which differ from state to state?

RESPONSE: The Federal Debt Collection Act of 1988 would facilitate certain collection activities, so as to create a saving to Federal collection efforts. The costs associated with litigation which would be reduced by the improvements in the Act are essentially those of post judgment enforcement. These costs range from approximately $12.00, in stations where postjudgment enforcement is relatively simple, to $325.00 in those where it is difficult. Based on approximately 9,000 enforcement actions per year, we would estimate that as much as $2.8 million could be saved per year if this legislation becomes law.

Senator HEFLIN. You do not give that $4 to the veterans, though, do you, if you collect it?

Mr. IVERS. Give it back to the veterans?

Senator HEFLIN. It does not come to the Veterans Administration; it goes to the Treasury, does it not?

Mr. IVERS. Some of our debt does go back into the fund from which it is expended. Much of it goes to the Treasury.

Senator HEFLIN. Under this bill, would the same thing be true?

Mr. IVERS. Yes, sir.

Senator HEFLIN. You would still give some of it back?

Mr. IVERS. We would still get back the same dollars that we do now, those dollars that come out of trust fund-type programs.

Senator HEFLIN. I will ask both of you, do you feel that both your agencies need to devote more resources to Federal debt collection?

Mr. TECKLER. We do, Mr. Chairman. We are actively involved in beefing up our debt collection efforts. Mr. Benderson's office has been directly involved, as I said, with the Justice Department and the U.S. attorneys offices. We have also been cooperating quite extensively with the Office of Management and Budget in their debt collection initiatives. We have a very large effort in the debt collection area at SBA.

Mr. IVERS. We have over the years, Senator, devoted a substantial amount of resources to debt collection and do not feel it would be necessary to increase those resources. In fact, the provisions in this bill would permit us to better use the resources that we currently have,

Senator HEFLIN. Thank you. We may have questions submitted in writing. If so, we would appreciate your prompt response.

Thank you. The record will be open for at least 2 weeks, maybe longer.

[Whereupon, at 11:15 a.m., the subcommittee adjourned.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

May 6, 1988

Statement of

OLIVER S. HEARD, JR.

Heard, Goggan, Blair & Williams

Submitted to the

Committee on the Judiciary

United States Senate

Subcommittee on Courts

Concerning S. 1961, The Federal Debt Collection

Procedures Act of 1988

Mr. Chairman:

I am honored to have the opportunity to submit my views recommending the adoption of S. 1961, "The Federal Debt Collection Procedures Act of 1988."

I submit these views on behalf of my law firm, the firm of Heard, Goggan, Blair & Williams, which collects delinquent ad valorem taxes for jurisdictions throughout the State of Texas.

We do so under contract, and our activities have more than doubled delinquent tax collections on the average; in many jurisdictions, delinquent collections have more than tripled. Interestingly, we have found in those cases where we achieve a relatively small increase in delinquent collections, it is usually because the onset of our collection program has caused a sizable increase in pre-delinquent collections.

Based on this experience, there are several points I want to make that--to my mind--substantiate the need for this legislation.

95-926 - 89 - 7

- It is absolutely crucial to put the Federal Government's debt management house in order, given the budget crisis.

- There needs to be a sound and comprehensive body of operating policies for the government to use in structuring its billing, collection, and litigation efforts related to debts.

- These policies must create a process that integrates the government's procedures all the way from billing and collection on through to litigation and the satisfaction of judgments.

- The best way for these policies to be implemented is for the government to retain the most skilled and efficient private firms to provide these services under strict government agency supervision.

- These private firms can operate much more effectively if they can litigate using the remedies and procedures that would be made available by S. 1961 in all federal judicial districts for the collection of debts owed to the Government.

In closing, Mr. Chairman, I think it is important to emphasize that while this legislation may not be of the kind that makes headlines, it most certainly is of the kind that makes a difference to the people of the United States both as taxpayers and as citizens.

STATEMENT OF JUDITH HOFMANN
ASSISTANT SECRETARY FOR ADMINISTRATION
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development is one of the major creditor Federal agencies. The debt owed to this Department is enormous. Most of the debt results from mortgages insured by HUD, not from direct loans. The Federal Housing Administration (FHA) insures lenders against default by borrowers. HUD collects insurance premiums which are intended to cover claims paid as a result of defaults. Our debt portfolio grows each time HUD accepts assignment of a mortgage or note after paying an insurance claim to the insured lender.

Although the terms and conditions of mortgage insurance are established by Congress, our ability to collect valid debts under the various HUD programs may be -- and all too often is -- constrained by individual State laws. The current system of collecting debt is not always equitable; debtors who reside in States with strong collection laws must pay debts rightfully owed to the Federal government, while those living in States with less stringent collection laws are often shielded from having to repay debts just as rightfully owed to the Federal government. A uniform system of collecting Federal debt would provide an evenhanded collection system for all Federal debtors, at the same time both protecting the risk to the Federal government and sending a message to debtors that the Federal government is firm in its resolve to collect past-due debts. An effective collection mechanism is important to HUD since the continued effectiveness of many of our loan guarantee programs depends on

revolving funds. It is important to HUD also in assuring that we have the funds to insure new loans.

In pursuing collection action, HUD utilizes all of the tools available to Federal agencies. The first step is usually to negotiate a repayment plan with the debtor. If the debtor refuses to negotiate, or negotiates and then becomes delinquent under the new plan despite follow-ups by mail and telephone, other steps are taken:

> The delinquent debtor may be reported to the local credit bureau.
>
> "Skipped" debtors may be located with the help of the IRS, credit bureaus, or the Postal Service.
>
> If the debtor is a Federal or military employee, his or her salary may be offset.
>
> Collection agencies may be used to collect the debt or the Internal Revenue Service may offset the debt against the debtor's income tax refund.

Only when all other means have failed do we seek a legal judgment or foreclosure, and it is at this stage that the lack of uniformity in State laws demonstrates the unfairness of the differing rules for collection. For example, most FHA insurance has a mutuality feature. Through this mutuality feature, the borrower shares in FHA's profits. When the FHA mortgage is paid in full, a distribution of the excess in that mortgage's category is made to the mortgagor (borrower). In effect, the typical homebuyer subsidizes the few who fail to meet mortgage terms. Differences in State laws have the economic effect of making the "subsidy" to some delinquent debtors greater than for debtors of other States.

In housing, the time required to complete a foreclosure is critical to the market value of the property. Our experience indicates that once foreclosure action is initiated, the property deteriorates at an accelerated rate, usually because of neglect on the part of the delinquent debtor.

Section 3701 of the proposed Federal Debt Collection Procedures Act would provide for Federal law to govern the treatment of Federal debtors in foreclosure actions, including, specifically, redemption rights and deficiency judgments. HUD assumes that the use of the Section 3701 procedure is at the government's option and that the government would be permitted to use other available procedures at its discretion, if not constrained by any Federal statute, regulation, or provision in the transaction document.

Section 3702 of the Federal Debt Collection Procedures Act would strengthen our hand in collecting from debtors in States with antideficiency statutes and "one action rules" which require secured creditors to foreclose even though other remedies would be more advantageous to collect the debt. It would not change our current procedures or the methods used by the loan holders to foreclose the loans, but it would provide us with the ability to further reduce the Federal deficit by allowing us to collect on a deficiency judgment following the foreclosure of an insured mortgage or loan. Some State laws restricting or prohibiting collection of deficiencies now cripple our efforts in this regard.

Other provisions of the Federal Debt Collection Procedures Act would assure better collection of our Title I loans by

providing a fair and effective system for the garnishment of non-exempt wages, for the enforcement of liens by selling property, for reaching bank accounts or property held by third persons, for establishing uniform limitations for homestead exemptions, and for restricting the dischargeability of claims under the Bankruptcy Code.

Those same provisions would facilitate collection of fines assessed in criminal cases as well. During FY 1987, 362 persons and firms were indicted and 326 were convicted for fraudulent activities including fraudulent activities in connection with single-family mortgage insurance programs. In addition, every year we identify problems in the areas of tenant fraud and rental assistance. During FY 1987, 125 individuals were indicted and 107 were convicted for rental assistance fraud. Following are but a few examples of significant investigation cases:

> An ongoing task force investigation in the Washington, D.C., area resulted in 12 convictions. Eleven individuals were sentenced, including a Washington, D.C., real estate speculator, a Veterans Administration fee appraiser, and a settlement attorney. These individuals were the first to be convicted under the Racketeer Influenced and Corrupt Organizations (RICO) statute for fraud in HUD's Single Family Programs. In total, the 12 individuals were sentenced to 42 years in jail, 22 years' probation, and 350 hours of community service, fined $194,000, and required to make restitution of $652,987 and forfeitures of $323,902 under the RICO statute. Three of the individuals were suspended and three were debarred from doing business with HUD.
>
> A Federal District Judge entered a final judgment in the amount of $632,705 against a real estate speculator who was convicted of fraud in originating single-family mortgage loans. Following the conviction, the government sought recovery of losses, damages, and forfeitures under the False Claims Act.

A default judgment of $60,000 was entered against a Massachusetts tenant who lived in a Section 8 unit and failed to disclose her ownership of the property, thereby resulting in overpayment of assistance.

Restitution judgments are obtained in most of these criminal cases. Restitution and repayments to the Department during FY 1987 amounted to $7,314,365 and fines totaled $949,546. When debtors stop paying on such judgments, however, to collect we have to resort to State courts and to conflicting State laws. The Federal Debt Procedures Act would give us what we need: uniform and effective procedures for collecting criminal fines, court-ordered restitution, and civil judgments.

This Administration is pledged to reduce debts owed to the Federal Government. To enable us to do our important part in this initiative, the Department of Housing and Urban Development enthusiastically supports the Federal Debt Collection Procedures Act. Its passage will give us the means to do our job.

ASSOCIATION TASK FORCE ON SIMPLIFICATION

RICHARD A. GIVENS
Chair
Botein Hays & Sklar
Suite 3014
200 Park Avenue
New York, NY 10166

New York State Bar Association

STATEMENT OF RICHARD A. GIVENS, CHAIR, NEW YORK STATE BAR ASSOCIATION TASK FORCE ON SIMPLIFICATION OF THE LAW, BEFORE THE SENATE JUDICIARY COMMITTEE, SUBMITTED APRIL 15, 1988, ON S 1961, 100th CONG, 1st SESS (1987)

"FEDERAL DEBT COLLECTION PROCEDURES ACT"

I. INTRODUCTION

I am pleased to support S 1961 with the changes in language and accompanying proposed legislative history agreed upon by Hon. Katherine Deoudes of the Executive Office for United States Attorneys, attached as appendices to this statement.

I also recommend three deletions in the bill which I will outline at the end of this statement.

II. BENEFITS OF THE BILL

In my view, the bill will benefit the public by -

(a) providing uniformity of application of federal law in regard to obligations to the Federal Government,

(b) permitting better nationwide training of personnel, and

(c) promoting both fairness and effectiveness in debt collection procedures.

Through these means the bill will help to bring in revenue due the Government, an important tool of fiscal policy. At the same time it will help to assure uniform protection of the rights of debtors.

NYSBA

The Government has a greater need to be both firm and fair than a private party -- because of the dual relationship of the debtor as both debtor and citizen, and the Government's role as parens patriae and creditor. In other words, the government as creditor has a responsiblility to avoid either showing weakness that would encourage raids on the Treasury, or showing heavy handedness unbefitting its role as caretaker of constitutional rights.

As always, power creates responsibility - both to use the power to achieve its legitimate objectives and to avoid its misuse. See Stone, "The Public Influence of the Bar," 48 Harv L Rev 1 (1934).

S 1961 as revised promotes both objectives.

III. BASIS OF STATEMENT

I am supporting this bill with the annexed amendments both as a citizen and for two other reasons:

(1) As former Regional Director of the Federal Trade Commission in New York from 1971 to 1977, I am particularly sensitive to the interdependence -- and the importance -- of both fair and effective collection practices, a subject on which the Regional Office held extensive hearings contributing to significant state legislation. See New York Regional Office, Federal Trade Commission, Report on Debt Collection Hearings (1973); e.g., NY Civ Prac Law & Rules 5015(c), formerly NY Judiciary Law § 217-a.

(2) As Chair of the Task Force on Simplification of the Law of the New York State Bar Association created in 1985, I believe the bill will significantly simplify the crazyquilt of collection of national debts under 50 different sets of laws where suits are brought in federal court.

Due to pressure of time, the Task Force as a whole has not voted on the bill. For its comments on related procedural issues, see New York State Bar Ass'n, Task Force on Simplification of the Law, Goals for Simplification of the Law for the Twenty-First Century, Part One - Legal Procedure (March 1988); Toward Legal Simplification (1987).

IV. TRIBUTE TO EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Before making some more specific comments, I wish to pay tribute to the way this bill was developed for congressional consideration. The original version grew out of consultation by the Executive Office for United States Attorneys under the leadership of Katherine Deoudes with the help of Assistant U.S. Attorneys throughout the country who bear the brunt of trying to collect debts owed the United States both effectively and fairly, with firmness where necessary and with restraint where appropriate.

Once the bill was printed in its original form as introduced on December 8, 1987, comments were of course received from various sources. I first reviewed the bill in that form and I contacted Ms. Deoudes to support the bill as a whole enthusiastically while recommending various changes.

Ms. Deoudes, Assistant U.S. Attorney Kathleen Haggerty of the Eastern District of New York and Assistant U.S. Attorney S. David Schiller of the Eastern District of Virginia met with me, explained numerous points which were not initially clear and also listened to recommendations based on information gleaned from the FTC Regional Office hearings, leading to agreement on points I had raised with the few exceptions noted at the end of this statement. The government representatives combined firmness in pursuit of mission, attention to detail, and flexibility in considering new ideas where consistent with their objective.

In particular, I wish to compliment Ms. Deoudes on her dedication to adequate collection and her persuasiveness in explaining the benefits of the bill, combined with recognition of the interdependence of fairness and effectiveness in legislation of this kind. Ms. Haggerty and Mr. Schiller showed similar sensitivity to the issues and a high degree of technical skill, illustrating representation of the United States at the highest level of quality. I was extremely pleased at the statesmanlike approach taken by all of the government representatives.

V. DISCUSSION OF SELECTED AGREED CHANGES

Most of the proposed changes in S 1961, and its supporting statement intended to become part of its legislative history as set forth in the appendices to this statement are self-explanatory. I wish to add only a few comments in regard to some.

A. DISCUSSION OF GOVERNMENT COMMENTS ON THE BILL AS A WHOLE

The revised governmental discussion of the bill as a whole makes clear several important points worthy of note as part of the legislative history of this vital piece of legislation.

1. DISCRETION OF GOVERNMENT COUNSEL

The comments confirm that government counsel have broad discretion, both as representatives of the United States and as a matter of good business practice. They are not required to act in a mechanical manner regardless of the circumstances. If small amounts are owed by an impecunious debtor arising from innocently received overpayments in the distant past, for example, such matters would not normally be pursued to the bitter end, since to do so is neither cost effective nor in the interest of the United States as a matter of policy.

Similarly, if a debtor can be kept in possession of home or farm while making reasonable payments, the Act permits and, if appropriate, contemplates a reasonable accommodation -- always provided the debtor is acting in good faith rather than fraudulently or with evil intent. Sections 3105, 3305 and 3307 make such flexibility evident. Thus, the United States has the authority to act as would a prudent private creditor.

2. THIRD PARTY PROVIDER FRAUD

As revised and with its accompanying comments, S 1961 can also become an affirmative antifraud measure.

This is important because many obligations to the United States now grow out of benefits provided by third parties -- as in the case of guaranteed student loans for private vocational education, to take one important example. Many providers perform excellent service both for the beneficiary -- e.g., the student -- and for the future of the Nation, and deserve the thanks of all for doing so.

Yet those who fail to honor their commitments can collect debts because of government-guaranteed loans even where in the private marketplace they might not be able to do so because of defenses such as failure of consideration, fraud, deceptive practices or false advertising, breach of warranty and the like (e.g., NY Gen Bus Law §§349-350; Uniform Commercial Code §§ 2-215 - 2-217) or the requirement to mitigate damages, e.g., Judo, Inc v Delaney, 42 Misc2d 504, 248 NYS2d 386 (NYC Civ Ct 1964); see Phelps Dodge Corp v NLRB, 313 US 177 (1941); NY Pers Prop Law § 412-a; "Contracts for Future Consumer Services," 24 Record of The Ass'n of the Bar of the City of New York 494 (Nov 1969). [1]

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[1] Some educational requirements are critical to job performance. Others are imposed by licensing rules, some of which may be protectionist, designed to keep out new entrants or provide more revenue for some types of schools. See New York State Bar Ass'n, Action Unit #5, New York State Regulatory Reform, ch 2 (1982); Special Committee on Consumer Affairs, "Licensing as a Consumer Pretection Measure," 28 Record of The Ass'n of the Bar of the City of New York 646 (1973); Gellhorn, "The Abuses of Occupational Licensing,"44 U Chi L Rev 6 (1976).

Requirements of that type, unnecessary to legitimate consumer, health or safety needs, may be vulnerable under the Commerce Clause. See Raymond Motor Transp, Inc v Rice, 434 US 429 (1978); New York State Bar Ass'n, Task Force on Simplifica-

While failure of performance on the part of third parties providing goods or services to recipients of loans guaranteed by the United States affords no defense against the United States in its actions to recover the funds, such failure may furnish a basis for recovery against the provider. In such cases, the provider can be made a third party defendant under Rule 14 of the Federal Rules of Civil Procedure.

The Act with the recommended legislative history contemplates that the United States will, through appropriate means depending on the circumstances, assist in providing information about such options to debtors where it appears that claims against third parties may be proper under Rule 14. This will benefit not only those debtors who may have been defrauded, but also the interests of the United States:

1. By helping to prevent the erroneous impression from arising that the Government is acting as a debt collector for firms who may have acted improperly. This is important to avoid hostility based on the perception that the government is on the side of fraudulent providers when this is obviously not the case.

2. By providing another means of law enforcement against irresponsible providers -- as the marketplace would in the absence of a public sector guarantee of the debt, since assertion of defenses such as breach of warranty may normally prevent private creditors who act improperly from collecting.

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tion of the Law, "Report on the Commerce Clause of the Federal Constitution and Complex Regulation Imposing a Burden on Interstate Commerce," 58 NYSBJ 52 (1986).

Through this means, the debt collection effort can also promote the objectives sought by anti-fraud statutes such as the Federal Trade Commission Act (15 USC §§ 45, 53[b]), the mail and wire fraud statutes, and their companion injunctive enforcement provisions (18 USC §§ 1341-1345); see also Special Committee on Consumer Affairs, "The Creation of Consumer Fraud Units in United States Attorney's Offices in Major Metropolitan Areas," 32 Record of The Ass'n of the Bar of the City of New York 371 (1977).

Inability of a provider to collect debts where the customer has a counterclaim or defense is an important means of policing in the private sector. But this function is inhibited if governmental guarantees assure payment to a provider. See generally New York Regional Office, Federal Trade Commission, Report on Debt Collection Hearings (1973).

Normally, where a governmentally-granted or guaranteed loan is not involved, a consumer may assert against a creditor acting in concert with a seller of goods or services, a claim or defense avialable against the seller under the FTC's "Holder in Due Course Rule," 16 CFR § 433. See Smith, "Preserving Consumers' Claims and Defenses," 63 ABAJ 1401 (Oct 1977). The procedure to be followed under the Act is designed to achieve a similar objective, without impeding governmental collection of obligations due the United States.

Under Rule 14(a) of the Federal Rules of Civil Procedure, third party claims may be asserted by a defendant against "a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff."

Where such a third party may be liable to the defendant for sums due, the debtor may be able to collect this amount in whole or in part from the provider. The provider's liability may be based on other aspects of the same transaction giving rise to the claim of the United States, arising under other legal principles, including either state law as mentioned earlier or any applicable federal source of law such as the Truth in Lending Act, 15 USC § 1601 et seq, Magnuson-Moss Federal Warranty Act, 15 USC § 2301 et seq, or other statutes. See American Fidelity & Casualty Co v Greyhound Corp, 232 F2d 89 (5th Cir 1956); see also Moor v Alemada County, 411 US 693 (1973); Dery v Wyer, 265 F2d 804 (2d Cir 1959).

Ancillary jurisdiction over such third party claims can be exercised by the federal courts. No independent grounds for jurisdiction are needed where a proper third party claim is asserted. Revere Copper & Brass, Inc v Aetna Casualty & Surety Co, 426 F2d 709 (5th Cir 1970).

Thus both collection and law enforcement functions will be served -- particularly if the debtor cannot pay but the third party can.

B. COMMENTS ON SPECIFIC AGREED AMENDMENTS

§3005 - ELIMINATION OF STATE STATUTES OF LIMITATION - In precluding use of varying state statutes of limitations to bar federal claims, this section and its proposed legislative history leave in place limitations prescribed by Congress, and where these are absent, leave the way open for federal common law development under general equitable concepts to bar obsolete claims precluded by laches, fairness, reliance and other equitable doctrines.

Where a recipient obtains excess payments by fraud, for example, they should be recoverable once the fraud is discovered, even much later. If, on the other hand, for example, a member of the Armed Forces received an overpayment in 1942 through a paymaster's error, this should not be recovered with interest in 1988 even had Congress not enacted specific legislation. Section 3005 is intended to leave these matters to federal judicial treatent rather than state law, not to create a vacuum in the protection afforded by limitations.

§3008 - REQUIREMENTS FOR AFFIDAVITS - Hearsay may properly be used in affidavits to obtain relief in federal cases even apart from this provision, which is declaratory of existing law -- provided only that the hearsay be reliable, as is the case with search warrants and indeed generally under Federal Rules of Evidence 801 - 806. Similarly, business records and other reliable documents may be used under these Rules.

Mere conclusory statements based on information and belief not stating reliable grounds for the belief are, however, obviously improper as a basis for action which might be detrimental if erroneous.

§3014 - COSTS - This section as revised provides that the United States may recover an automatically designated percentage of the debt as its prelitigation costs, thus avoiding the additional expense and uncertainty of proving actual costs. Similarly, no defendant will be penalized for contesting a claim by incurring additional costs, thus exerting a chilling effect on the exercise of the constitutional right to a day in Court. See generally "Creditor's Right to Collect Attorney's Fees: The State Law Issue," 95 Banking LJ 718 (Sept 1978).

The flat percentage set forth in §3014 is intended to cover all costs other than those routinely allowed to litigants without specific statutory provision and the special costs for postjudgment collection provided for but limited by § 3302(c). The flat percentage approach is appropriate because it makes a rough allocation of collection costs between the debtor and the creditor (public or private) which must accept a portion of such expense as part of the cost of engaging in a particular type of activity.

Deliberate nonpayment of a debt clearly due and which the debtor can pay is clearly attributable to the debtor -- and in egregious cases is subject to fraud sanctions, including those outside the scope of S 1961. Extension of credit to marginal

credit risks as a matter of governmental or business policy or strategy, on the other hand, is a cost of doing business. Since these mixed factors are hard to sort out in individual cases, rules of thumb are appropriate.

Plaintiff-only fee provisions are generally utilized only where a specific incentive to promote private enforcement of laws for protection of the public is defined as a congressional objective, asin some antitrust cases for example. Fairness demands that litigation cost liability be two-way where a normally less powerful litigant may have to pay the fees of a more powerful one as in many debt collection cases in the public and private sector. This is reflected in numerous state laws, see 95 Banking LJ 718 (1978), and is achieved in the case of S 1961 by the applicability of the Equal Access to Justice Act (28 USC §2412) to government litigation generally.

§3101 - NOTICE OF PREJUDGMENT REMEDY - Subsection (c) provides for advance notice, but failure to meet the deadline set merely means the remedy can be effectuated subject to later motion to set it aside if appropriate.

§3102 - PREJUDGMENT REMEDIES WITHOUT PRIOR NOTICE - The agreed revisions in this section and related provisions, and its proposed legislative history make it clear that prejudgment remedies without prior notice are justified in cases of emergency but are the exception, not the rule. In particular, by permitting nationwide service of process as Congress has done in other statutes, the revised version of the bill allows citizens

to exercise their constitutional right to travel within the United States without risking seizures of assets because of leaving the limited jurisdiction of a particular district court.

The revisions make it clear that the preconditions set forth in §§3101 and 3102 apply to all prejudgment remedies, including those more specifically described in subsequent sections of S 1961.

§3105 - INJUNCTIONS - This section as revised preserves the inherent equitable powers of the federal courts to grant injunctive relief on behalf of either the United States or a private party as required by the circumstances.

§3304(a) - PROPERTY SUBJECT TO EXECUTION - The proposed comments on the bill contemplate that a co-owner of property ordinarily have the opportunity to pay an obligation to the United States, thus acquiring a claim against the original debtor, before dominion over the property is disturbed. This concept is also relevant to subchapter G relating to partition.

§3305 - INSTALLMENT PAYMENT ORDER - This section is intended to protect the United States where a debtor such as a self-employed professional has sources of income not reachable by other collection devices. It also provides a means for debtors to protect other property or sources of income from interference in return for being subjected to an injunctive payment order.

The formulation of the order -- ordinarily through negotiation where possible if the debtor is acting in good faith -- is intended to take all relevant factors into account

including reasonable needs of the debtor, the claims of the United States, and the interests of third parties. The section cannot to be used to circumvent garnishment limitations under other provisions of federal law (15 USC § 1763) where the income stream can be reached by that method and where the debtor does not consent to an installment payment order. In other words, congressional garnishment limitations are to be given full weight where relevant under this section whether or not literally applicable. See Stone, "The Common Law in the United States," 50 Harv L Rev 4, 12-18 (1936).

§3307 - MODIFICATION OF PROTECTIVE ORDER; SUPERVISION OF ENFORCEMENT - This section in combination with the revised §3304(a), preserving equitable remedies for all parties, permits the court to act in the interest of justice in all cases under the Act.

For example if a farmer is delinquent on a guaranteed loan, even secured by a mortgage, the farmer could request the court to permit continued occupancy while negotiated or court-ordered installment payments under §3305 were made, on condition that the land be used in a way that preserves its value as an asset -- and, of course, as a byproduct of doing so, its value for future generations, as discussed in New York State Bar Association, Task Force on Simplification of the Law, Goals for Simplification of the Law for the Twenty-First Century, Part Two: Substantive Law (April 1988).

VI. THREE PROPOSED DELETIONS

Without conditioning my endorsement of S 1961 as revised on further changes, I recommend deletion of three unecessary and potentially troublesome sections of S 1961 as introduced:

1. DELETION OF SUBSECTION 3002(j), on page 7 of the original version of S 1961 - This section authorizes collection of tax judgments and criminal judgments by means of any remedies available under applicable state law. This provision is unnecessary, because S 1961 was carefully drafted to encompass all necessary remedies for collection of federal debts.

While tax and criminal judgments should of course be collected, they should be collected under uniform nationwide standards as contemplated by the bill, which is indeed one of its main benefits.

If there are critical remedies not included in S 1961 which subsection (j) is needed to preserve, they should be mentioned to this Committee and added to the bill. Enacting provisions for which no known application can be supplied would be inappropriate.

2. DELETION OF SUBSECTION 3204(b) - TREASURY BILL INTEREST RATE - Section 3402(b) allows interest to be charged on unpaid amounts equal to the Treasury bill yield rate. The purpose of subsection (b) is, of course, important and worthy of support. By providing for postjudgment interest equal to that realized on government obligations, the subsection would avoid

giving debtors an incentive to withhold payment because they could collect without risk interest greater than they would have to pay on unpaid judgments for debts due the United States.

Section 3204(a)(2), however, permits Treasury or other regulations to establish postjudgment interest rates. Subsection 3204(b), specifically referring to particular Treasury auction rates in the statute itself, is thus unnecessary.

And subsection (b) is inappropriate as legislation, although it may be appropriate if adopted as regulation under § 3204(a)(2)a. The reason for the distinction is that Treasury auctions and the details of their implementation (including fifty-two week cycles mentioned in this section of the bill) are established by administrative action and not by statute. For a statute to be drafted on the assumption that regulatory action not governed by statute will always remain in the same posture as at the time of enactment risks confusion, should the regulatory disposition change, even in minute details. If this important although technical error has been made before, it is still an error. Congress should stop repeating the mistake.

3. DELETION OF SUBSECTION 203(14), on page 92 of the original version of S 1961. This subsection inappropriately removes dischargeability in bankruptcy of benefit overpayments arising under Title XVIII of the Social Security Act.

Overpayments due to fraud are already ordinarily nondischargeable under the Bankruptcy Code (11 USC § 523). Innocently received overpayments due to govermental error, on the

other hand, are not the kind of obligations which should haunt a person for life. Instead, they should be discharged in bankruptcy. And they should also be subject to reasonable limitations through congressionally enacted statutes of limitations or federal common law where no specific statute applies, based on doctrines of reliance, estoppel, laches and the like as applicable. under §§ 3005 with its lgislative history, § 3105 and § 3307.

VII. CONCLUSION

Both the content of S 1961 with the revisions noted in the attached appendices, and the process by which it was developed, merit high praise.

S 1961 is both a debt collection and consumer protection measure of high importance. It is both as a charter of fairness for those who owe debts to the United States and an important tool for expediting collection of sums due the United States.

By enhancing both the effectiveness and fairness of collection, and by establishing nationwide uniformity where the relationship of the citizen to the United States is involved as contemplated by the Supremacy Clause, the bill promotes objectives of constitutional dimension.

It deserves favorable action.

Respectfully submitted,

Richard A Givens

RICHARD A. GIVENS

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

April 14, 1988

Dear Senator Heflin:

The purpose of this letter is to express our support for passage of S. 1961, the "Federal Debt Collection Procedures Act of 1987."

We understand that S. 1961 would establish a system of judicial remedies for use by the Federal Government. The establishment of such a system would, in effect, override the application of State law for collecting Federal debts in Federal courts, but would have no effect on the use of State law remedies between private parties in Federal courts or between the government and its debtors litigating in State courts.

This bill would allow for the equitable treatment of all debtors owing the Federal Government regardless of place of debtor residence and would eliminate certain states as "debtor havens." Its passage would greatly contribute to the government's ability to collect its debts through litigation and would, therefore, enhance the entire credit management/debt collection effort.

The Department of Justice has our support for passage of this bill.

Sincerely,

W. E. Douglas

The Honorable Howell Heflin
Room 728, SHOB
Washington, D.C. 20510-0102